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Arranged and Numbered as Follows**

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ANNOTATED

CONTAINING THE PERMANENT LAWS OF THE STATE IN
FORCE AT THE CLOSE OF THE THIRTIETH
LEGISLATIVE ASSEMBLY OF 1947

NINE VOLUMES

COMPILED, REVISED AND ANNOTATED
UNDER CHAPTER 184, LAWS OF 1945 AND CHAPTER 266, LAWS OF 1947,
AND PUBLISHED UNDER CHAPTER 43, LAWS OF 1947

I. W. Choate
Wesley W. Wertz
CODE COMMISSIONERS

VOLUME 5

Soil Conservation to Taxation

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CHAPTER 1

STATE SOIL CONSERVATION DISTRICTS LAW

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Tit. 76, c. 1
New sec.
added
L. '51, c. 46
Sec. 1, p. 81

76-101. Short title. This act may be known and cited as "the state soil conservation districts law."

History: En. Sec. 1, Ch. 72, L. 1939.

Agriculture 6-1.

3 C.J.S. Agriculture §§ 2-4, 25, 31, 38.

76-102. Legislative determinations, and declaration of policy. It is hereby declared, as a matter of legislative determination:

76-102
Ref. to
L. '51, c. 46
Sec. 1, p. 82

A. The condition. That the farm and grazing lands of the state of Montana are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by wind and water; that the breaking of natural grass, plant, and forest-cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands causes a washing and blowing of soil and water from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible.

B. The consequences. That the consequences of such soil erosion in the form of soil-blowing and soil-washing are the silting and sedimentation of stream channels, reservoirs, dams and ditches; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes, and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops and range cover grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought and causes crop and range vegetation cover failures; and increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to operate eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods and from dust storms, and losses in municipal water supply, irrigation developments, farming and grazing.

C. The appropriate corrective methods. That to conserve soil resources and control and prevent soil erosion, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops, restriction of number of livestock grazed, deferred grazing, rodent eradication; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

D. Declaration of policy. It is hereby declared to be the policy of the legislature to provide for the conservation of the soil and soil resources of this state, and for the control and prevention of soil erosion, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

History: En. Sec. 2, Ch. 72, L. 1939.

Statutes—179.

59 C.J. Statutes § 567.

76-103. Definitions. Wherever used or referred to in this act, unless a different meaning clearly appears from the context:

(1) "District" or "soil conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organ-

ized in accordance with the provisions of this act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

(2) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this act;

(3) "Committee" or "state soil conservation committee" means the agency created in section 76-104;

(4) "Petition" means a petition filed under the provisions of sub-section A of section 76-105 for the creation of a district;

(5) "Nominating petition" means a petition filed under the provisions of section 76-106 to nominate candidates for the office of supervisor of a soil conservation district;

(6) "State" means the state of Montana;

(7) "Agency of this state" includes the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state;

(8) "United States" or "agencies of the United States" includes the United States of America, the soil conservation service of the United States department of agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America;

(9) "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency, or instrumentality, corporate or otherwise of either of them;

(10) "Land occupier" or "occupier of land" includes any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this act, whether as owner, lessee, renter, tenant, or otherwise;

(11) "Due notice" means notice published at least twice, with an interval of at least fourteen (14) days between the two publication dates, in a newspaper or other publication of general circulation within the proposed area, or by posting at a reasonable number of conspicuous places within the appropriate area, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates.

History: En. Sec. 3, Ch. 72, L. 1939. Agriculture 3.

3 C.J.S. Agriculture §§ 8-10.

76-104. State soil conservation committee. A. There is hereby established, to serve as an agency of the state, and to perform the functions conferred upon it in this act, the state soil conservation committee. The state soil conservation committee shall consist of seven (7) members. The following shall serve as members of the committee: The director of the state agricultural experiment station at Bozeman, Montana; the director of the state extension service at Bozeman, Montana; one member of the state grazing commission designated by that commission; one member of the water conservation board designated by that board and the commissioner of the state department of agriculture. Two (2) additional farmer members shall be chosen by the governor, one from each of a group of five (5) to be submitted by each of the two (2) leading farm organizations. The committee

76-104(A)
Amended
L. '51, c. 21
Sec. 1, p. 28

may invite the secretary of agriculture of the United States of America to appoint one person to serve with the above-mentioned members as a non-voting member of the committee. The committee shall keep a record of its official actions, shall adopt a seal, which seal shall be judicially noticed, and may perform such acts, hold such public hearings, and promulgate such rules and regulations as may be necessary for the execution of its functions under this act.

B. The state soil conservation committee may employ an administrative officer and such other agents and employees, permanent and temporary, as it may require, and shall determine their qualifications, duties, and compensation. The committee may call upon the state for such legal services as it may require, or may employ its own counsel and legal staff. It shall have authority to delegate to its chairman, to one or more of its members, or to one or more agents or employees, such powers and duties as it may deem proper. It shall be supplied with suitable office accommodations at the state college at Bozeman, Montana, and shall be furnished with the necessary supplies and equipment. Upon request of the committee for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible under available appropriations, and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of such agency or institution of learning, and make such special reports, surveys, or studies as the committee may request.

C. The committee shall annually elect a chairman from its own membership. State committeemen shall continue as members of the state committee so long as they shall retain the offices by virtue of which they shall be serving on the committee. The appointed farmer members shall hold office for four (4) years and their term of office shall be concurrent with the governor. A majority of the committee shall constitute a quorum, and the concurrence of a majority in any matter within their duties shall be required for its determination. Ex officio members of the committee shall receive no compensation for their services on the committee. Other members of the committee shall receive five dollars (\$5.00) per day while on duty. All members of the state committee shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of their duties on the committee. The committee shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the account of receipts and disbursements.

D. In addition to the duties and powers hereinafter conferred upon the state soil conservation committee, it shall have the following duties and powers:

- (1) To offer such assistance as may be appropriate to the supervisors of soil conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs;

- (2) To keep the supervisors of each of the several districts organized under the provisions of this act informed of the activities and experiences of all other districts organized hereunder, and to facilitate an interchange

of advice and experiences between such districts and cooperation between them;

(3) To coordinate the programs of the several soil conservation districts organized hereunder so far as this may be done by advice and consultation;

(4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts;

(5) To disseminate information throughout the state concerning the activities and programs of the soil conservation districts organized hereunder, and to encourage the formation of such districts in areas where their organization is desirable.

History: En. Sec. 4, Ch. 72, L. 1939. Agriculture 2.
3 C.J.S. Agriculture § 6.

76-105. Creation of soil conservation districts. A. Any ten (10) occupiers of land lying within the limits of the territory proposed to be organized into a district may file a petition with the state soil conservation committee asking that a soil conservation district be organized to function in the territory described in the petition. Such petition shall set forth:

(1) The proposed name of said district;

(2) That there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the territory described in the petition;

(3) A description of the territory proposed to be organized as a district, which description shall not be required to be given by metes and bounds or by legal subdivisions, but shall be deemed sufficient if generally accurate;

(4) A request that the state soil conservation committee duly define the boundaries for such district; that a referendum be held within the territory so defined on the question of the creation of a soil conservation district in such territory; and that the committee determine that such a district be created.

Where more than one petition is filed covering parts of the same territory, the state soil conservation committee may consolidate all or any of such petitions.

B. Within thirty (30) days after such a petition has been filed with the state soil conservation committee, it shall cause due notice to be given of a proposed hearing upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of such district, upon the question of the appropriate boundaries to be assigned to such district, upon the propriety of the petition and other proceedings taken under this act, and upon all questions relevant to such inquiries. All occupiers of land within the limits of the territory described in the petition, and of lands within any territory considered for addition to such described territory, and all other interested parties, shall have the right to attend such hearings and to be heard. If it shall appear upon the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the hearing shall be adjourned and due notice of further hearing shall be given throughout the entire area considered for inclusion in the district,

76-105
Ref. to
L. '51, c. 46
Sec. 1, p. 82

and such further hearing held. After such hearing, if the committee shall determine, upon the facts presented at such hearing and upon such other relevant facts and information as may be available, that there is need, in the interest of the public health, safety and welfare, for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination, and shall define, by metes and bounds or by legal subdivisions, the boundaries of such district. In making such determinations and in defining such boundaries, the committee shall give due weight and consideration to the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits such lands may receive from being included within such boundaries, the relation of the proposed area to existing watersheds and agricultural regions, and to other soil conservation districts already organized or proposed for organization under the provisions of this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determinations set forth in section 76-102. The territory to be included within such boundaries need not be contiguous. If the committee shall determine after such hearing, after due consideration of the said relevant facts, that there is no need for a soil conservation district to function in the territory considered at the hearing, it shall make and record such determination and shall deny the petition. After six (6) months shall have expired from the date of the denial of any such petition, subsequent petitions covering the same or substantially the same territory may be filed as aforesaid and new hearing held and determinations made thereon.

C. After the committee has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within such boundaries with the powers conferred upon soil conservation districts in this act is administratively practicable and feasible. To assist the committee in the determination of such administrative practicability and feasibility, it shall be the duty of the committee, within a reasonable time after entry of the finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, to hold a referendum within the proposed district upon the proposition of the creation of the district, and to cause due notice of such referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a soil conservation district of the lands below described and lying in the county(ies) of _____, and _____" and "Against creation of a soil conservation district of the lands below described and lying in the county(ies) of _____ and _____" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose creation of such district. The ballot shall set forth the boundaries of such proposed district as determined by the committee. All occupiers of lands lying within the boundaries of the territory, as determined by the state soil conservation

committee, shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote.

D. The committee shall pay all expenses for the issuance of such notices and the conduct of such hearings and referenda, and shall supervise the conduct of such hearings and referenda. It shall issue appropriate regulations governing the conduct of such hearings and referenda, and providing for the registration prior to the date of the referendum of all eligible voters, or prescribing some other appropriate procedure for the determination of those eligible as voters in such referendum. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

E. The committee shall publish the result of such referendum and shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the operation of such district is not administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the operation of such district is administratively practicable and feasible, it shall record such determination and shall proceed with the organization of the district in the manner hereinafter provided. In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the defined boundaries, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the proposed district, the probable expense of carrying on erosion-control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative determinations set forth in section 76-102; provided, however, that the committee shall not have authority to determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless at least sixty-five (65) percent of the votes cast in the referendum upon the proposition of creation of the district shall have been cast in favor of the creation of such district.

F. If the committee shall determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two (2) supervisors to act with the three (3) supervisors elected as provided hereinafter, as the governing body of the district. Such district shall be a governmental subdivision of this state and a public body corporate and politic, upon the taking of the following proceedings:

The two (2) appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth (and such application need contain no detail other than the mere recitals): (1) That a petition for the creation of the district was filed with the state soil conservation committee pursuant to the provisions of this act, and that the proceedings specified in this act were taken pursuant to such petition; that the application is being filed in order to complete the organization of the district as

a governmental subdivision and a public body, corporate and politic, under this act; and that the committee has appointed them as supervisors; (2) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office; (3) the term of office of each of the supervisors; (4) the name which is proposed for the district; and (5) the location of the principal offices of the supervisors of the district. The application shall be subscribed and sworn to by each of the said supervisors before an officer authorized by the laws of this state to take and certify oaths, who shall certify upon the application that he personally knows the supervisors and knows them to be the officers as affirmed in the application, and that each has subscribed thereto in the officer's presence. The application shall be accompanied by a statement by the state soil conservation committee, which shall certify (and such statement need contain no detail other than the mere recitals) that a petition was filed, notice issued, and hearing held as aforesaid; that the committee did duly determine that there is need, in the interest of the public health, safety, and welfare, for a soil conservation district to function in the proposed territory and did define the boundaries thereof; that notice was given and a referendum held on the question of the creation of such district, and that the result of such referendum showed sixty-five (65) percent of the votes cast in such referendum to be in favor of the creation of the district; that thereafter the committee did duly determine that the operation of the proposed district is administratively practicable and feasible; the said statement shall set forth the boundaries of the district as they have been defined by the committee.

The secretary of state shall examine the application and statement and, if he finds that the name proposed for the district is not identical with that of any other soil conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state shall find that the name proposed for the district is identical with that of any other soil conservation district of this state, or so nearly similar as to lead to confusion and uncertainty, he shall certify such fact to the state soil conservation committee, which shall thereupon submit to the secretary of state a new name for the said district, which shall not be subject to such defects. Upon receipt of such new name, free of such defects, the secretary of state shall record the application and statement, with the name so modified, in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded, as herein provided, the district shall constitute a governmental subdivision of this state and a public body corporate and politic. The secretary of state shall make and issue to the said supervisors without cost a certificate, under the seal of the state, of the due organization of the said district, and shall record such certificate with the application and statement. The boundaries of such district shall include the territory as determined by the state soil conservation committee as aforesaid, but in no event shall they include any area included within the boundaries of another soil conservation district organized under the provisions of this act.

G. After six (6) months shall have expired from the date of entry of a determination by the state soil conservation committee that operation of

a proposed district is not administratively practicable and feasible, and denial of a petition pursuant to such determination, subsequent petitions may be filed as aforesaid, and action taken thereon in accordance with the provisions of this act.

H. Petitions for including additional territory within an existing district may be filed with the state soil conservation committee, and the proceedings herein provided for in the case of petitions to organize a district shall be observed in the case of petitions for such inclusion. The committee shall prescribe the form for such petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of land occupiers in the area proposed for inclusion shall be less than ten (10), the petition may be filed when signed by a majority of the occupiers of such area, and in such case no referendum need be held. In referenda upon petitions for such inclusion, all occupiers of land lying within the proposed additional area shall be eligible to vote.

I. In any suit, action, or proceeding involving the validity or enforcement of, or relating to, any contract, proceeding, or action of the district, the district shall be deemed to have been established in accordance with the provisions of this act upon proof of the issuance of the aforesaid certificate by the secretary of state. A copy of such certificate, duly certified by the secretary of state, shall be admissible in evidence in any such suit, action, or proceeding and shall be proof of the filing and contents thereof.

History: En. Sec. 5, Ch. 72, L. 1939.

76-106. Election of supervisors for each district. Within thirty (30) days after the date of issuance by the secretary of state of a certificate of organization of a soil conservation district, nominating petitions may be filed with the state soil conservation committee to nominate candidates for supervisors of such districts. The committee shall have authority to extend the time within which nominating petitions may be filed. No such nominating petition shall be accepted by the committee unless it shall be subscribed by ten (10) or more occupiers of lands lying within the boundaries of such district. Land occupiers may sign more than one such nominating petition to nominate more than one candidate for supervisor. The committee shall give due notice of an election to be held for the election of three (3) supervisors for the district. The names of all nominees on behalf of whom such nominating petitions have been filed within the time herein designated, shall be printed, arranged in the alphabetical order of the surnames, upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three (3) names to indicate the voter's preference. All occupiers of lands lying within the district shall be eligible to vote in such election. Only such land occupiers shall be eligible to vote. The three (3) candidates who shall receive the largest number, respectively, of the votes cast in such election shall be the elected supervisors for such district. The committee shall pay all the expenses of such election, shall supervise the conduct thereof, shall prescribe regulations governing the conduct of such election and the determination of the eligibility of votes therein, and shall publish the results thereof.

History: En. Sec. 6, Ch. 72, L. 1939.

76-107. Appointment, qualifications and tenure of supervisors. The governing body of the district shall consist of five (5) supervisors, elected as provided hereinabove.

The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be three (3) years, except that the supervisors who are first appointed shall be designated to serve for terms of one (1) and two (2) years, respectively, from the date of their appointment. A supervisor shall hold office until his successor has been elected and has qualified. Vacancies shall be filled for the unexpired term. The selection of successor to fill an unexpired term, or for a full term shall be by election. A majority of the supervisors shall constitute a quorum and the concurrence of a majority in any matter within their duties shall be required for its determination. A supervisor shall receive no compensation for his services, but he shall be entitled to expenses, including traveling expenses, necessarily incurred in the discharge of his duties.

The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require, and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require, or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees, such powers and duties as they may deem proper. The supervisors shall furnish to the state soil conservation committee, copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they shall adopt or employ, and such other information concerning their activities as may be required in the performance of its duties under this act.

The supervisors shall provide for the execution of surety bonds for all employees and officers who shall be entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings, and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. Any supervisor may be removed by the state soil conservation committee upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason.

The supervisors may invite the legislative body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of such municipality or county.

History: En. Sec. 7, Ch. 72, L. 1939.

76-108. Powers of districts and supervisors. A soil conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion and the preventive and control measures needed,

to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the districts on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved, and soil erosion in the form of soil blowing and soil washing may be prevented and controlled;

(3) To carry out preventive and control measures within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, on lands owned or controlled by this State or any of its agencies with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion;

(7) To construct, improve, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or

desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, erosion-control, or erosion-prevention project located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, erosion-control, or erosion-prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state.

History: En. Sec. 8, Ch. 72, L. 1939.

76-109. Adoption of land use regulations. (A) The supervisors of any district shall have authority to formulate regulations governing the use of lands within the district in the interest of conserving soil and soil resources and preventing and controlling soil erosion. The supervisors may conduct such public meetings and public hearings upon tentative regulations as may be necessary to assist them in this work. The supervisors shall not have authority to enact such land-use regulations into law until after they shall have caused due notice to be given of their intention to conduct a referendum for submission of such regulations to the occupiers of lands lying within the boundaries of the district for their indication of approval or disapproval of such proposed regulations, and until after the supervisors have considered the result of such referendum.

(B) The proposed regulations shall be embodied in a proposed ordinance. Copies of such proposed ordinance shall be available for the inspection of all eligible voters during the period between publication of such notice and the date of the referendum. The notices of the referendum shall recite the contents of such proposed ordinance, or shall state where copies of such proposed ordinance may be examined. The question shall be submitted by ballots, upon which the words "For approval of proposed ordinance No....., prescribing land-use regulations for conservation of soil and prevention of erosion" and "Against approval of proposed ordinance No....., prescribing land-use regulations for conservation of soil and prevention of erosion" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose approval of such proposed ordinance. The supervisors shall supervise such referendum, shall prescribe appropriate regulations governing the conduct thereof, and shall publish the result thereof. All occupiers of lands within the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relating thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(C) The supervisors shall not have authority to enact such proposed ordinance into law unless at least sixty-five (65) percent of the votes cast in such referendum shall have been cast for approval of the said proposed ordinance. The approval of the proposed ordinance by sixty-five (65) percent of the votes cast in such referendum shall not be deemed to require the supervisors to enact such proposed ordinance into law. Land-use regulations prescribed in ordinances adopted pursuant to the provisions of this section by the supervisors of any district shall have the force and effect of law in the said district and shall be binding and obligatory upon all occupiers of lands within such district.

(D) Any occupier of land within such district may at any time file a petition with the supervisors asking that any or all of the land-use regulations prescribed in any ordinance adopted by the supervisors under the provisions of this section shall be amended, supplemented, or repealed. Land-use regulations prescribed in any ordinance adopted pursuant to the provisions of this section shall not be amended, supplemented, or repealed, except in accordance with the procedure prescribed in this section for adoption of land-use regulations. Referenda on adoption, amendment, supplementation, or repeal of land-use regulations shall not be held more often than once in six (6) months.

The regulations to be adopted by the supervisors under the provisions of this section may include:

1. Provisions requiring the carrying out of necessary engineering operations, including the construction of water spreaders, terraces, terrace outlets, check dams, dikes, ponds, ditches, fences, and other necessary structures;

2. Provisions requiring observance of particular methods of cultivation or grazing, including contour cultivating, contour furrowing, lister furrow-

ing, sowing, planting, strip cropping, seeding, and planting of lands to water-conserving and erosion-preventing plants, trees and grasses, forestation and reforestation;

3. Specifications of cropping and range programs and tillage and grazing practices to be observed;

4. Provisions requiring the retirement from cultivation of highly erosive areas or of areas on which erosion may not be adequately controlled if cultivation is carried on;

5. Provisions for such other means, measures, operations, and programs as may assist conservation of soil resources and prevent or control soil erosion in the district, having due regard to the legislative findings set forth in section 76-102.

The regulations shall be uniform throughout the territory comprised within the district except that the supervisors may classify the lands within the district with reference to such factors as soil type, degree of slope, degree of erosion threatened or existing, grazing and cropping programs, and tillage and range practices in use, and other relevant factors and may provide regulations varying with the type or class of land affected, but uniform as to all lands within each class or type. Copies of land-use regulations adopted under the provisions of this section shall be printed and made available to all occupiers of lands lying within the district.

History: En. Sec. 9, Ch. 72, L. 1939.

76-110. Performance of work under the regulations by the supervisors.

(1) The supervisors shall have authority to go upon any lands within the district after a complaint shall have been filed with the supervisors charging a violation of the regulations, to determine whether land-use regulations adopted under the provisions of section 76-109 are being observed.

(2) Where the supervisors of any district shall find that any of the provisions of land-use regulations prescribed in any ordinance adopted in accordance with the provisions of section 76-109 are not being observed on particular lands, and that such nonobservance tends to increase erosion on such lands, and is interfering with the prevention or control of erosion on other lands within the district, the supervisors may present to the district court of the county in which the lands of the defendant may lie, a petition, duly verified, setting forth the adoption of the ordinance prescribing land-use regulations, the failure of the defendant land occupier to observe such regulations, and to perform particular work, operations, or avoidances as required thereby, and that such nonobservance tends to increase erosion on such lands and is interfering with the prevention or control of erosion on other lands within the district, and praying the court to require the defendant to perform the work, operations, or avoidances within a reasonable time and to order that if the defendant shall fail so to perform the supervisors may go on the land, perform the work or other operations or otherwise bring the condition of such lands into conformity with the requirements of such regulations, and recover the costs and expenses thereof, with interest, from the occupier of such land.

(3) Upon the presentation of such petition, the court shall cause process to be issued against the defendant, and shall hear the case. If it

shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence, or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made.

(4) The court may dismiss the petition; or it may require the defendant to perform the work, operations, or avoidances, and may provide that upon the failure of the defendant to initiate such performance within the time specified in the order of the court, and to prosecute the same to completion with reasonable diligence, the supervisors may enter upon the lands involved and perform the work or operations or otherwise bring the condition of such lands into conformity with the requirements of the regulations and recover the costs and expenses thereof, with interest at the rate of five (5) per centum per annum, from the occupier of such lands. In all cases where the person in possession of lands, who shall fail to perform such work, operations, or avoidances shall not be the owner, the owner of such lands shall be joined as party defendant.

(5) The court shall retain jurisdiction of the case until after the work has been completed. Upon completion of such work pursuant to such order of the court the supervisors may file a petition with the court, a copy of which shall be served upon the defendant in the case, stating the costs and expenses sustained by them in the performance of the work and praying judgment therefor with interest. The court shall have jurisdiction to enter judgment for the amount of such costs and expenses, with interest at the rate of five (5) per centum per annum until paid, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

History: En. Sec. 10, Ch. 72, L. 1939.

76-111. Board of adjustment. A. Where the supervisors of any district organized under the provisions of this act shall adopt an ordinance prescribing land-use regulations in accordance with the provisions of section 76-109, they shall further provide by ordinance for the establishment of a board of adjustment. Such board of adjustment shall consist of three (3) members, each to be appointed for a term of three (3) years, except that the members first appointed shall be appointed for terms of 1, 2, and 3 years, respectively. The members of each such board of adjustment shall be appointed by the state soil conservation committee, with the advice and approval of the supervisors of the district for which such board has been established, and shall be removable, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other reason, such hearing to be conducted jointly by the state soil conservation committee and the supervisors of the district. Vacancies in the board of adjustment shall be filled in the same manner as original appointments and shall be for the unexpired term of the member whose term becomes vacant. Members of the state soil conservation committee and the supervisors of the district shall be ineligible to appointment as members of the board of adjustment during their tenure of such other office. The members of the board of adjustment shall receive compensation for their services at the rate of four dollars (\$4.00) per diem for time spent on the work of the board, in addition to expenses, including traveling expenses, necessarily incurred in

the discharge of their duties. The supervisors shall pay the necessary administrative and other expenses of operation incurred by the board, upon the certificate of the chairman of the board.

B. The board of adjustment shall adopt rules to govern its procedures, which rules shall be in accordance with the provisions of this act and with provisions of any ordinance adopted pursuant to this section. The board shall annually elect a chairman from among its members. Meetings of the board shall be held at the call of the chairman and at such other times as the board may determine. Any two (2) members of the board shall constitute a quorum. The chairman, or in his absence, such other member of the board as he may designate to serve as acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep a full and accurate record of all proceedings, of all documents filed with it, and of all orders entered, which shall be filed in the office of the board and shall be a public record.

C. Any land occupier may file a petition with the board of adjustment, alleging that there are great practical difficulties or unnecessary hardship in the way of his carrying out upon his lands the strict letter of the land-use regulations prescribed by ordinance approved by the supervisors, and praying the board to authorize a variance from the terms of the land-use regulations in the application of such regulations to the lands occupied by the petitioner. Copies of such petition shall be served by the petitioner upon the chairman of the supervisors of the district within which his lands are located and upon the chairman of the state soil conservation committee. The board of adjustment shall fix a time for the hearing of the petition and cause due notice of such hearing to be given. The supervisors of the district and the state soil conservation committee shall have the right to appear and be heard at such hearing. Any occupier of lands lying within the district who shall object to the authorizing of the variance prayed for may intervene and become a party to the proceedings. Any party to the hearing before the board may appear in person, by agent, or by attorney. If, upon the facts presented at such hearing the board shall determine that there are great practical difficulties or unnecessary hardship in the way of applying the strict letter of any of the land-use regulations upon the lands of the petitioner, it shall make and record such determination and shall make and record findings of fact as to the specific conditions which establish such great practical difficulties or unnecessary hardship. Upon the basis of such findings and determination, the board shall have power by order to authorize such variance from the terms of the land-use regulations, in their application to the lands of the petitioner, as will relieve such great practical difficulties or unnecessary hardship and will not be contrary to the public interest, and such that the spirit of the land-use regulations shall be observed, the public health, safety, and welfare secured, and substantial justice done.

D. Any petitioner aggrieved by an order of the board granting or denying, in whole or in part, the relief sought, the supervisors of the district or any intervening party, may obtain a review of such order in any district court of the county in which the lands of the petitioner may lie, by filing in such court a petition praying that the order of the board be

modified or set aside. A copy of such petition shall forthwith be served upon the parties to the hearing before the board and thereupon the party seeking review shall file in the court a transcript of the entire record in the proceedings, certified by the board, including the documents and testimony upon which the order complained of was entered, and the findings, determination, and order of the board. Upon such filing, the court shall cause notice thereof to be served upon the parties and shall have jurisdiction of the proceedings and of the questions determined or to be determined therein, and shall have power to grant such temporary relief as it deems just and proper, and to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside, in whole or in part, the order of the board. No contention that has not been urged before the board shall be considered by the court unless the failure or neglect to urge such contention shall be excused because of extraordinary circumstances. The findings of the board as to the facts, if supported by evidence, shall be conclusive. If any party shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such evidence is material and that there were reasonable grounds for the failure to produce such evidence in the hearing before the board, the court may order such additional evidence to be taken before the board and to be made a part of the transcript. The board may modify its findings as to the facts or make new findings, taking into consideration the additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file with the court its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review in the same manner as are other judgments or decrees of the court.

History: En. Sec. 11, Ch. 72, L. 1939.

76-112. Cooperation between districts. The supervisors of any two or more districts organized under the provisions of this act may cooperate with one another in the exercise of any or all powers conferred in this act.

History: En. Sec. 12, Ch. 72, L. 1939.

76-113. State agencies to cooperate. Agencies of this state which shall have jurisdiction over, or be charged with the administration of any state-owned lands, and of any county, or other governmental subdivision of the state, which shall have jurisdiction over, or be charged with the administration of, any county-owned or other publicly owned lands, lying within the boundaries of any district organized hereunder, shall cooperate to the fullest extent with the supervisors of such districts in the effectuation of programs and operations undertaken by the supervisors under the provisions of this act. The supervisors of such districts shall be given free access to enter and perform work upon such publicly owned lands. The provisions of land-use regulations adopted pursuant to section 76-109 shall have the force and effect of law over all such publicly owned lands, and shall be in all respects observed by the agencies administering such lands.

History: En. Sec. 13, Ch. 72, L. 1939. 20 C.J.S. Counties § 169; 59 C.J. States
§ 276 et seq.
Counties 106; States 87.

76-114. Discontinuance of districts. (1) At any time after five (5) years after the organization of a district under the provisions of this act, any ten (10) occupiers of land lying within the boundaries of such district may file a petition with the state soil conservation committee, praying that the operations of the district be terminated and the existence of the district discontinued. The committee may conduct such public meetings and public hearings upon such petition as may be necessary to assist it in the consideration thereof.

(2) Within sixty (60) days after such a petition has been received by the committee it shall give due notice of the holding of a referendum, and shall supervise such referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the(name of the soil conservation district to be here inserted)" and "Against terminating the existence of the(name of the soil conservation district to be here inserted)" shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other of said propositions as the voter may favor or oppose discontinuance of such district. All occupiers of lands lying within the boundaries of the district shall be eligible to vote in such referendum. Only such land occupiers shall be eligible to vote. No informalities in the conduct of such referendum or in any matters relative thereto shall invalidate said referendum or the result thereof if notice thereof shall have been given substantially as herein provided and said referendum shall have been fairly conducted.

(3) The committee shall publish the result of such referendum and shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the committee shall determine that the continued operation of such district is administratively practicable and feasible, it shall record such determination and deny the petition. If the committee shall determine that the continued operation of such district is not administratively practicable and feasible, it shall record such determination and shall certify such determination to the supervisors of the district.

(4) In making such determination the committee shall give due regard and weight to the attitudes of the occupiers of lands lying within the district, the number of land occupiers eligible to vote in such referendum who shall have voted, the proportion of the votes cast in such referendum in favor of the discontinuance of the district to the total number of votes cast, the approximate wealth and income of the land occupiers of the district, the probable expense of carrying on erosion control operations within such district, and such other economic and social factors as may be relevant to such determination, having due regard to the legislative findings set forth in section 76-102; provided, however, that the committee shall not have authority to determine that the continued operation of the district is administratively practicable and feasible unless at least a majority of the votes cast in the referendum shall have been cast in favor of the continuance of such district.

(5) Upon receipt from the state soil conservation committee of a certification that the committee has determined that the continued operation of the district is not administratively practicable and feasible, pursuant to the provisions of this section, the supervisors shall forthwith proceed to terminate the affairs of the district. The supervisors shall dispose of all property belonging to the district at public auction and shall pay over the proceeds of such sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of such district, and shall transmit with such application the certificate of the state soil conservation committee, setting forth the determination of the committee that the continued operation of such district is not administratively practicable and feasible. The application shall recite that the property of the district has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of such properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record such certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under the provisions of this section, all ordinances and regulations theretofore adopted and in force within such districts shall be of no further force and effect. All contracts theretofore entered into, to which the district or supervisors are parties, shall remain in force and effect for the period provided in such contracts. The state soil conservation committee shall be substituted for the district or supervisors as party to such contracts. The committee shall be entitled to all benefits and subject to all liabilities under such contracts and shall have the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate such contracts by mutual consent or otherwise, as the supervisors of the district would have had. Such dissolution shall not affect the lien of any judgment entered under the provisions of section 76-110, nor the pendency of any action instituted under the provisions of such section, and the committee shall succeed to all rights and obligations of the district or supervisors as to such liens and actions.

History: En. Sec. 14, Ch. 72, L. 1939.

76-115. Disposition of funds. A. Unless otherwise provided by law, all moneys which may from time to time be appropriated out of the state treasury to pay the administrative and other expenses of soil conservation districts organized under the provisions of this act shall be allocated by the state soil conservation committee among the districts already organized, or to be organized, during the ensuing biennial fiscal period, in accordance with the procedure specified in subsection B of this section. All moneys allocated to any district by the said committee shall be available to the supervisors of such district for all administrative and other expenses of the district under this act and for all administrative and other expenses of the board of adjustment established or to be established by said district.

B. Seventy-five (75) per centum of all moneys which may be appropriated to pay the administrative and other expenses of soil conservation districts shall be allocated by the state soil conservation committee among all the districts organized, or to be organized, within the ensuing biennial

fiscal period, under this act, in direct proportion to the total acreage of land within each district. The remaining twenty-five (25) per centum of said moneys shall be allocated by the state committee among the districts on such basis of allocation as shall be fair, reasonable, and in the public interest, giving due consideration to the greater relative expense of carrying on operations within the particular districts because of such factors as unusual topography, unusual severity of erosion, special difficulty of carrying on operations, special volume of work to be done, and the special importance of instituting erosion control operations immediately. In making allocations of such moneys, the committee shall retain an amount estimated by it to be adequate to enable it to make subsequent allocations in accordance with the provisions of this section from time to time among districts which may be organized after the initial allocations are made, but within the ensuing biennial fiscal period.

C. The state soil conservation committee shall submit to the state board of examiners, on or before the first day of November of each year preceding a regular session of the legislative assembly a request for an appropriation as provided in the budget act. The request for an appropriation shall state, in addition to the requirements of the budget act, the following:

The number and acreages of districts in existence or in process of organization, together with an estimate of the number and probable acreages of the districts which may be organized during the ensuing biennial fiscal period; a statement of the balance of funds, if any, available to the committee and to the districts; and the estimates of the committee as to the sums needed for its administrative and other expenses and for allocation among the several districts during the ensuing biennial fiscal period.

History: En. Sec. 15, Ch. 72, L. 1939.

76-116. Inconsistency with other acts. Insofar as any of the provisions of this act are inconsistent with the provisions of any other law, the provisions of this act shall be controlling.

History: En. Sec. 17, Ch. 72, L. 1939.

76-117
New sec.
added
L. '51, c. 46
Sec. 1, p. 81

TITLE 77

SOLDIERS, SAILORS AND MILITARY AFFAIRS

- Chapter 1. Militia, composition, enrollment—officers, general provisions, 77-101 to 77-163.
2. Military courts, 77-201 to 77-214.
 3. Articles governing militia, 77-301.
 4. General provisions, 77-401 to 77-414.
 5. Soldiers and sailors preference in public employment, 77-501.
 6. Re-employment of persons completing military or naval service, 77-601 to 77-601.
 7. Restoration of state and other employees to positions occupied before induction into military service, 77-701 to 77-708.
 8. Veterans' certificates of discharge—free filing, 77-801.
 9. Veterans' free tuition at university of Montana, 77-901.
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 11. Removal of disability of minority of veterans and spouses for benefits under servicemen's readjustment act, 77-1101.

Tit. 77
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Tit. 77
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Training
Fund
created
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CHAPTER 1

MILITIA, COMPOSITION, ENROLLMENT—OFFICERS, GENERAL PROVISIONS

- Section 77-101. Military code of state.
- 77-102. Composition of the militia.
- 77-103. Governor as commander-in-chief.
- 77-104. Composition of organized militia.
- 77-105. Declaration of policy.
- 77-106. Composition of national guard.
- 77-107. Governor may order out organized militia.
- 77-108. Governor may order out unorganized militia.
- 77-109. Penalty for failure to obey call.
- 77-110. Penalty for physician making false certificate.
- 77-111. Commander-in-chief may order enrollment.
- 77-112. Notice of enrollment.
- 77-113. Exemptions.
- 77-114. Penalties for dereliction or false certificate.
- 77-115. Compensation of enrolling officer.
- 77-116. Examination of persons and official records.
- 77-117. The adjutant-general of the state.
- 77-118. Suits against officers, or enlisted men.
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- 77-120. Duties of adjutant-general—salary.
- 77-121. Officers to be commissioned by the governor.
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- 77-123. Staff officers, how chosen.
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- 77-126. Commissioned officers—promotion.
- 77-127. Commissioned officers—detail to staff.
- 77-128. Promotion to grade of major.
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- 77-131. Promotion while in the service of the United States.
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- 77-138. Retirement of commissioned officers of national guard.
- 77-139. Voluntary retirement.
- 77-140. Physical disability.
- 77-141. Increase in rank.
- 77-142. Detail to active duty.
- 77-143. Pay while on retired list.
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- 77-145. Reserves.
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- 77-156. Camp duty.
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- 77-161. Transportation and subsistence.
- 77-162. Authority of commanding officer.
- 77-163. Warning for duty.

77-101. (1330) Military code of state. This act, together with subsequent acts amendatory thereof, and all future acts relating to the militia and national guard of Montana, shall be known as the Military Code of the state of Montana.

History: En. Sec. 1, Ch. 191, L. 1919; re-en. Sec. 1330, R. C. M. 1921. Cal. Pol. C. Secs. 1895-2112.

NOTE.—The first militia law of the state was enacted March 10, 1885, laws of 1885, pp. 95 to 100, appearing as sections 1451 to 1471, fifth division compiled statutes, 1887. This act was superseded by the national guard act of March 12, 1889 (pp. 189 to 205, laws of 1889). The latter act was superseded by a new military law enacted in 1895 and appearing as sections 2050 to 2245, political code, 1895. This act was superseded by senate bill No. 13, pp. 149 to 162, laws of 1897, which act appeared as sections 1045 to 1110, revised codes 1907. These sections were repealed by chapter 145, laws of 1911, which law

re-enacted a complete military code. The act of 1911 was referred to the people by referendum of November, 1912, and rejected by them, thus leaving sections 1045 to 1110, revised codes 1907, in effect. The law is here given as it appears by the enactment of chapter 191, laws of 1919.

Civil Liability of Military Officers

For a discussion of the civil liability of military officers for the destruction of private property, see *Herlihy v. Donohue*, 52 M 601, 161 P 164.

References

Cited or applied in *In re McDonald*; *In re Gillis*, 49 M 454, 43 P 947.

77-102. (1331) Composition of the militia. The militia of the state of Montana shall consist of all able-bodied male citizens of the United States, and all other able-bodied males who have or shall have declared their intention to become citizens of the United States, residing within this state, who shall be more than eighteen years of age, and except as hereinafter provided, not more than forty-five years of age, and said militia shall be divided into two classes, the national guard of Montana and the unorganized militia.

History: En. Sec. 2, Ch. 191, L. 1919; re-en. Sec. 1331, R. C. M. 1921.

Cross-References

Firemen exempt from military service, sec. 11-2004.

Policemen exempt from service, sec. 11-1810.	Militia 2.
Right to require service of persons, sec. 83-201.	40 C.J. Militia § 12 et seq.
Wearing uniform without authority, sec. 94-35-253.	36 Am. Jur. 211, Military, §§ 42 et seq.
	Enlistment or mustering of minors. 137 ALR 1467.

77-103. (1332) Governor as commander-in-chief. The militia of the state not in the service of the United States shall be governed and its affairs administered pursuant to law by the governor, as commander-in-chief, through the adjutant-general's department, which shall consist of the adjutant-general as its executive head, and such other officers and such enlisted men and civilian employees as the governor shall from time to time prescribe.

History: En. Sec. 3, Ch. 191, L. 1919; re-en. Sec. 1332, R. C. M. 1921.	Militia 1. 40 C.J. Militia § 23. 36 Am. Jur. 220, Military, § 56.
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77-104. (1333) Composition of organized militia. The organized militia of Montana shall consist of the commissioned officers, enlisted men, organizations, staffs, corps, and departments of the regularly commissioned and enlisted militia of the state, organized and maintained pursuant to law. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training, and discipline shall be prescribed by the governor, in conformity with the laws and regulations of the United States and the laws of this state. In the absence of any federal law or regulation to the contrary, its minimum enlisted strength shall be twelve hundred, and it shall include at all times the adjutant-general's department and at least one regiment of infantry. The governor may authorize and cause to be organized from time to time, within the organized militia of Montana, such additional staffs, corps, departments, branches, arms, and organizations as he shall deem necessary, and he shall have power at will to alter, divide, consolidate, disband, muster out, or reorganize any staff, corps, department, branch, arm, or tactical or administrative subdivision, either now existing or hereafter created within the organized militia of Montana, subject to the limitations imposed by the laws and regulations of the United States and the laws of this state.

History: En. Sec. 4, Ch. 191, L. 1919; re-en. Sec. 1333, R. C. M. 1921.	Militia 3. 40 C.J. Militia § 12.
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77-105. (1334) Declaration of policy. The duty of maintaining and governing the organized militia not in the service of the United States rests upon the states respectively, subject to the constitutional authority of Congress, but the prime object of the force is the national defense. Its efficiency as an agent for national defense necessarily depends upon systematic uniformity in the organization, composition, arms, equipment, training, and discipline of its component parts. Its attainment of such uniformity and efficiency requires on the part of each state a rigid adherence to federal laws and regulations relating to militia. Therefore, the governor shall cause the organized militia of this state always to conform to all such federal laws and regulations as are now or may hereafter, from time to time, become operative and applicable, notwithstanding anything in the laws of this state to the contrary. The organized militia of Montana, or any part thereof, shall be subject to call for United States service at such times, in

such manner, and such numbers as may from time to time be prescribed by the United States.

History: En. Sec. 5, Ch. 191, L. 1919;
re-en. Sec. 1334, R. C. M. 1921.

Militia[⊕]1.
40 C.J. Militia § 1 et seq.

77-106. (1335) Composition of national guard. The national guard of Montana shall consist of the commissioned officers, enlisted men, staffs, corps, departments, and organizations of the organized militia of Montana regularly organized and maintained pursuant to law for land service.

History: En. Sec. 7, Ch. 191, L. 1919;
re-en. Sec. 1335, R. C. M. 1921.

Militia[⊕]3.
40 C.J. Militia § 15 et seq.
36 Am. Jur. 213, Military, §§ 44 et seq.

77-107. (1336) Governor may order out organized militia. In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or body of men acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or in event of public disaster, the governor shall have power to order the organized militia of Montana, or any part thereof, into the active service of the state, and to cause them to perform such duty as he shall deem proper. The governor shall also have power to order out the organized militia, or any part thereof, to preserve order and keep the people within bounds at any large public assemblage; provided, that such action shall be taken only upon written request of the mayor of the city or the sheriff of the county, or a district judge in the judicial district within which said assemblage is to occur.

History: En. Sec. 8, Ch. 191, L. 1919;
re-en. Sec. 1336, R. C. M. 1921.

Insurrection and Sedition[⊕]5.
46 C.J.S. Insurrection and Sedition § 4.

Cross-Reference

Riots, duties, sec. 94-5311.

77-108. (1337) Governor may order out unorganized militia. In event of or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, if the governor shall have ordered into active service all the available forces of the organized militia of Montana and shall consider them insufficient in numbers to properly accomplish the purpose, he may then, in addition, order out the unorganized militia, or such portion thereof as he may deem necessary, and cause them to perform such military duty as the circumstances may require.

History: En. Sec. 9, Ch. 191, L. 1919;
re-en. Sec. 1337, R. C. M. 1921.

77-109. (1338) Penalty for failure to obey call. Every member of the militia who shall have been ordered out for either state or federal service under the provisions of the two preceding sections, and who shall refuse or wilfully or negligently fail to report at the time and place and to the officer designated in the order, or to the representative or successor of such officer, shall be deemed guilty of desertion, and shall suffer such penalty as a general court-martial may direct, unless he shall produce a sworn certificate from a licensed physician of good standing that he is physically unable to appear at the time and place designated; provided, that any person

chargeable with desertion under this section may be taken by force and compelled to serve.

History: En. Sec. 10, Ch. 191, L. 1919; Militia 5, 15.
re-en. Sec. 1338, R. C. M. 1921. 40 C.J. Militia §§ 68, 123.

77-110. (1339) Penalty for physician making false certificate. Whenever any physician shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service, such physician shall thereby forfeit forever his license and right to practice in this state, and shall be deemed guilty of perjury.

History: En. Sec. 11, Ch. 191, L. 1919; Physicians and Surgeons 11(2).
re-en. Sec. 1339, R. C. M. 1921. 48 C.J. Physicians and Surgeons § 72.

77-111. (1340) Commander-in-chief may order enrollment. Whenever the commander-in-chief shall deem it necessary, in event of or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process, or breach of the peace, he may order an enrollment by counties of all persons subject to military duty, designating the county assessor or some other person for each county to act as county enrolling officer. Each county enrolling officer may appoint such assistant or assistants as may be authorized by the commander-in-chief. In each county the enrollment shall include every sane, able-bodied male inhabitant not under sentence for an infamous crime, who is more than eighteen and less than forty-five years of age. The enrollment shall be made in triplicate, and shall state the name, residence, age, occupation, and previous or existing military or naval service of each person enrolled. When complete, the rolls shall be verified under oath by the enrolling officer, who shall immediately thereupon file one copy with the adjutant-general of the state and another with the county clerk, retaining the third copy for himself.

History: En. Sec. 12, Ch. 191, L. 1919; Militia 8.
re-en. Sec. 1340, R. C. M. 1921. 40 C.J. Militia §§ 6, 39, 41.

77-112. (1341) Notice of enrollment. Persons making an enrollment under this act shall, at the time of making same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to him personally, or by leaving it with some person of suitable age and discretion at his place of business or residence, or by mailing such notice to him at his last known place of residence, and shall make a return under oath of such service to accompany the copy of the enrollment filed with the adjutant-general. Such return shall be prima facie evidence of the facts therein shown.

History: En. Sec. 13, Ch. 191, L. 1919;
re-en. Sec. 1341, R. C. M. 1921.

77-113. (1342) Exemptions. Whenever an enrollment shall have been ordered under this act, the commanding officer of existing organizations of militia, and the chiefs of all police and fire departments, shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "Exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officers

shall also mark "Exempt" opposite the names of all federal, state, and county officers. All other persons claiming exemption must, within fifteen days after service upon them of the notice of enrollment, make a written verified claim in duplicate of such exemption, and file the same in the office of the county clerk, who shall within five days thereafter forward one copy thereof with remarks and recommendations to the adjutant-general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant-general, the latter shall notify the county clerk of his decision in each case where exemption has been claimed, and the county clerk shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant-general the word "Exempt." All those on the roll not marked "Exempt" shall be subject to military duty.

History: En. Sec. 14, Ch. 191, L. 1919;
re-en. Sec. 1342, R. C. M. 1921.

Militia 6.
40 C.J. Militia § 7.

77-114. (1343) Penalties for dereliction or false certificate. If any officer or person, who becomes charged under this act with any duty relating to an enrollment of persons subject to military duty, refuses or neglects to perform the same within the time and substantially in the manner required by law, or if he shall knowingly make any false certificate, or if, when acting as county or assistant enrolling officer, he shall knowingly or wilfully omit from the roll any person required by this act to be enrolled, he shall thereby forfeit not less than one hundred nor more than five hundred dollars, to be sued for in the name of the state of Montana by the prosecuting attorney of the county, in which such offense shall occur, the amount of the penalty to be determined by the court, and when recovered to be paid into the military fund of the state.

History: En. Sec. 15, Ch. 191, L. 1919;
re-en. Sec. 1343, R. C. M. 1921.

Militia 3.
40 C.J. Militia §§ 123, 125.

77-115. (1344) Compensation of enrolling officer. Each county enrolling officer shall be allowed the sum of five cents per name enrolled and served with notice of enrollment by him or his assistants, to be audited and paid as other military bills out of any moneys in the military fund not otherwise appropriated, and from such allowance he must pay his assistant or assistants.

History: En. Sec. 16, Ch. 191, L. 1919;
re-en. Sec. 1344, R. C. M. 1921.

Militia 8.
40 C.J. Militia § 51.

77-116. (1345) Examination of persons and official records. All civil officers in each county, city, and town shall allow persons authorized under this act to make enrollments, at all proper times to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in section 77-114, upon application of any person legally authorized to make an enrollment, truthfully to state all of the facts within his knowledge concerning any individual of whom the enroller shall make inquiry. In event of a violation of this section, the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty.

History: En. Sec. 17, Ch. 191, L. 1919;
re-en. Sec. 1345, R. C. M. 1921.

Militia 8.
40 C.J. Militia § 41 et seq.

77-117
(1348 RCM'35)
Amended
§ L. 49, C. 21
Sec. 1, P. 32

77-117. (1346) The adjutant-general of the state. There shall be an adjutant-general of the state, who shall be appointed by the governor, and shall have the rank of brigadier-general. He shall hold office at the pleasure of the governor, and his commission shall expire with the term for which the governor appointing him shall have been elected. He shall perform the duties prescribed for him in this chapter and in the regulations now or hereafter issued thereunder, and in the statutes of the United States now or hereafter enacted, and such duties as pertain to the duties of the chiefs of staff departments.

History: En. Sec. 23, Ch. 191, L. 1919;
re-en. Sec. 1346, R. C. M. 1921.

Militia § 7.
40 C.J. Militia § 25.

77-118. (1347) Suits against officers, or enlisted men. When any suit or proceeding shall be commenced in any court by any person against any military officer of the state for any act done by such officer in his official capacity in the discharge of any duty under this act, or against any person acting under the authority or order of any such officer, or by virtue of any warrant issued by him pursuant to law, the defendant may require the person prosecuting or instituting such suit or proceeding to file a cost bond running to the state of Montana of not less than two hundred dollars, or such greater sum as may be fixed by the court on application therefor, for the payment of costs that may be incurred by the defendant therein, and in case the plaintiff shall be nonsuited, or have the verdict or judgment rendered against him, the defendant shall recover costs. The defendant in such action shall be defended by the attorney general at the expense of the state, but private counsel may be employed by the defendant. No action shall lie against any officer or enlisted man for any acts done by him by virtue of any order which may hereafter be held invalid by any civil court.

History: En. Sec. 18, Ch. 191, L. 1919;
re-en. Sec. 1347, R. C. M. 1921.

Militia § 19.
40 C.J. Militia § 122.

77-119. (1348) Personal staff for governor. Whenever the governor shall desire the attendance of a personal staff upon any ceremonial occasion, he shall detail therefor such officers as he may choose from the active list of the organized militia of Montana, resident in or nearest to the place where such ceremonies are to be held, and the officers detailed shall attend in uniform at the time and place designated, and shall constitute the personal staff of the governor for that occasion, reverting upon completion of such duty to their regular assignments.

History: En. Sec. 19, Ch. 191, L. 1919;
re-en. Sec. 1348, R. C. M. 1921.

Militia § 1.
40 C.J. Militia § 68.

77-120
(1349 RCM'35)
Rel. Matter
SL. 49, C. 29
Secs. 1-6
PP. 64-67

77-120. (1349) Duties of adjutant-general—salary. The adjutant-general shall be ex officio chief of staff. He shall hold office until his successor is appointed and qualified. He shall appoint the civilian employees of his department, and may remove any of them in his discretion.

The expenses of the adjutant-general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures are audited, allowed, and paid. Before entering upon his official duties, the adjutant-general must execute an official bond running to the state of Montana in the penal sum of one thousand dollars, conditioned

upon the faithful performance of his duties, said bond to be submitted to the attorney general for approval, and when approved to be filed in the office of the secretary of state, the cost of said bond to be paid from the military fund of the state. The adjutant-general shall obtain and pay for, from the military fund, a surety company bond or bonds running to the state of Montana, covering all of the officers of the organized militia of Montana responsible to the state for money or military property, such bond or bonds to be approved and filed in the same manner as the adjutant-general's bond.

1. The adjutant-general shall keep a roster of all active, reserve, and retired officers of the militia of the state, and keep in his office all records and papers required to be kept and filed therein, and shall submit to the governor, during December of each even numbered year, a printed biennial report of the operations and conditions of the organized militia of Montana.

2. He shall cause the military law, the regulations of the organized militia of Montana, and such other military publications as may be necessary for the military service, to be printed, indexed, and bound at the expense of the state, and distributed to the commissioned officers of the organized militia of Montana.

3. He shall keep and preserve the books, arms, accoutrements, ammunition, and other military property belonging to the state, not properly issued.

4. He shall keep just and true accounts of all moneys received and disbursed by him.

5. He shall attest all commissions issued to military officers of this state.

6. He shall make out and transmit all militia reports, returns, and communications prescribed by acts of Congress or by direction of the secretary of war.

7. He shall have a seal, and all copies, orders, records, and papers in his office, duly certified and authenticated under said seal, shall be evidence in all cases in like manner as if the originals were produced. The seal now used in the office of the adjutant-general shall be the seal of his office, and shall be delivered by him to his successor. All orders issued from his office shall be authenticated with said seal.

8. He shall make such regulations pertaining to the preparation of reports and returns, and to the care and preservation of property in possession of the state for military purposes, whether belonging to the state or to the United States, as in his opinion the conditions demand.

9. He shall attend to the care, preservation, safekeeping, and the repairing of the arms, ordnance, accoutrements, equipment, and all other military property belonging to the state, or issued to the state by the government of the United States for military purposes, and keep accurate accounts thereof. All military property of the state, which after proper inspection shall be found unsuitable for use of the state, shall be disposed of in such manner as the governor shall direct, and the proceeds thereof paid into the military fund of the state.

10. He shall issue such military property as the necessity of the service requires, and make purchases for that purpose. No military property shall be issued or loaned except upon an emergency to persons or organiza-

tions other than those belonging to the organized militia of Montana, except to such portions of the unorganized militia as may be called out by the governor.

11. He shall keep on file in his office the reports and returns of troops and heads of military departments, and all other writings and papers required to be transmitted to and preserved at the general headquarters of the state militia.

12. The annual salary of the adjutant-general of the state of Montana shall be four thousand two hundred dollars (\$4,200.00).

History: En. Sec. 20, Ch. 191, L. 1919;
re-en. Sec. 1349, R. C. M. 1921; subd. 12
added as en. Sec. 1, Ch. 118, L. 1947.

Cross-Reference

Salary of adjutant-general, sec. 25-505.

NOTE.—Bond is given as fixed by section 6-101.

Militia 7.

40 C.J. Militia § 31.

77-120
Sub-Sec. 12
(SL. 47, C. 118
Sec. 2)
Amended
SL. 49, C. 20
Sec. 4, P. 31

77-121. (1350) Officers to be commissioned by the governor. All commissioned officers of the organized militia of Montana shall be appointed and commissioned by the governor. No person shall be so appointed and commissioned unless he shall be a citizen of the United States and of this state, and more than twenty-one years of age. Every commissioned officer shall hold office under his commission until he shall have been regularly appointed and commissioned to another grade or office, or until he shall have been regularly retired, discharged, dismissed, or placed in the reserve.

History: En. Sec. 21, Ch. 191, L. 1919;
re-en. Sec. 1350, R. C. M. 1921.

Militia 7.

40 C.J. Militia § 31.

77-122. (1351) Commissioned officers. No person shall be appointed and commissioned to any office in the organized militia of Montana unless he shall have been examined and adjudged qualified therefor by an examining board whose report shall have been approved by the authority appointing the board. The composition, appointment, and procedure of examining boards, and the nature and scope of examinations, shall be prescribed by the laws or regulations of the United States or those of this state. Whenever a commissioned officer shall have been examined for promotion, pursuant to this section, and shall have been adjudged not qualified therefor, upon approval by the authority appointing the board of its report to that effect such officer shall be honorably discharged, retired, or placed in the reserve, as the governor shall direct, or returned to his former rank and grade if otherwise by this record qualified therefor in the opinion of the governor.

History: En. Sec. 22, Ch. 191, L. 1919;
re-en. Sec. 1351, R. C. M. 1921.

77-123. (1352) Staff officers, how chosen. Vacancies in commissioned grades in administrative staff, corps, and departments shall be filled by detail or by appointment and commission, as the governor shall have prescribed in regulations conforming as nearly as practicable with federal laws and regulations governing the filling of similar vacancies in the federal service; provided, that no officer shall be detailed or appointed and commissioned to any such staff, corps, or department without his written consent. The detail of an officer to a staff, corps, or department shall not affect his grade, relative seniority, or right of promotion in the branch or arm

of the service from which he shall have been so detailed, and whenever, during the continuance of such detail, a vacancy shall occur in the branch or arm of the service from which such officer shall have been detailed, for which vacancy he would have been eligible in the absence of such detail, he shall, upon the termination of such detail and passing the required examination, be appointed and commissioned in the grade of such vacancy with rank from the date of occurrence thereof. When an officer shall be relieved from detail with any staff, corps, or department, he shall be returned to the branch or arm of the service from which he was detailed, and shall be assigned to fill the next vacancy therein of his rank and grade, and if there be no vacancy immediately available he shall be carried in the meantime upon the active list as "unassigned."

History: En. Sec. 24, Ch. 191, L. 1919; Militia 7.
re-en. Sec. 1352, R. C. M. 1921. 40 C.J. Militia § 36.

77-124. (1353) Eligibility for staff assignment. Staff officers of the national guard of Montana, including officers of the pay, inspection, subsistence, and medical departments, hereafter appointed, shall have had previous military experience and shall hold their positions until they shall have reached the age of sixty-four years, unless retired prior to that time by reason of resignation, disability, or for cause to be determined by a court-martial legally convened for that purpose, and vacancies among said officers shall be filled by appointment from the officers of the militia of this state. This section shall cease to be effective whenever its provisions shall not be required by federal law as a condition to participation by the state in federal appropriations.

History: En. Sec. 25, Ch. 191, L. 1919; Militia 7.
re-en. Sec. 1353, R. C. M. 1921. 40 C.J. Militia §§ 28, 34.

77-125. (1354) Commissioned officers—selection. Whenever a vacancy shall have occurred in the junior commissioned office of any company or similar unit of the national guard of Montana, the person to be appointed and commissioned to fill such vacancy shall be selected by competitive examination in which all enlisted men of the branch or arm of the service wherein such vacancy shall have occurred, on duty at the station where it shall have occurred, shall be eligible to participate.

History: En. Sec. 26, Ch. 191, L. 1919; Militia 7.
re-en. Sec. 1354, R. C. M. 1921. 40 C.J. Militia § 36.

77-126. (1355) Commissioned officers—promotion. Whenever a vacancy shall have occurred in any commissioned office of a company or similar unit of the organized militia of Montana other than the junior commissioned office thereof, the same shall be filled by the assignment thereto of an officer of the same grade and branch or arm of the service resident of the station of said company or similar unit, or by the promotion of the senior officer of the next lower grade of the same branch or arm of the service resident at that station.

History: En. Sec. 27, Ch. 191, L. 1919; Militia 7.
re-en. Sec. 1355, R. C. M. 1921. 40 C.J. Militia § 33.

77-127. (1356) Commissioned officers—detail to staff. Whenever a vacancy shall have occurred in the commissioned staff of any regiment, battalion, squadron, or similar unit of the organized militia of Montana, the

same shall be filled by the assignment thereto of an officer of the same grade and branch or arm of the service, or by the promotion of the senior officer of the next lower grade of the same unit.

History: En. Sec. 28, Ch. 191, L. 1919; Militia \S 7.
re-en. Sec. 1356, R. C. M. 1921. 40 C.J. Militia \S 36.

77-128. (1357) Promotion to grade of major. Whenever a vacancy shall have occurred in the grade of major in the line of the national guard of Montana, the same shall be filled as follows:

1. In any battalion, squadron, or similar unit whose elements are all at one station, by the assignment of the senior major of the line of the same branch or arm of the service resident at that station, who shall have no command wholly located within said station, or, if there be no such major, by the promotion of the senior captain in the same branch or arm of the service resident at said station.

2. In any battalion, squadron, or similar unit whose elements are not all at one station, by the promotion of the senior among the captains of the same branch or arm of the service resident at the various stations of such command.

History: En. Sec. 29, Ch. 191, L. 1919;
re-en. Sec. 1357, R. C. M. 1921.

77-129. (1358) Promotion to grade of lieutenant-colonel and colonel. Whenever a vacancy shall have occurred in the grade of colonel or lieutenant-colonel in any regiment or similar unit of the national guard of Montana, it shall be filled by promotion of the next senior officer of such command, except in those cases where the law provides for the assignment thereto of officers relieved from detail with staff corps and departments.

History: En. Sec. 30, Ch. 191, L. 1919;
re-en. Sec. 1358, R. C. M. 1921.

77-130. (1359) Promotion to grade of brigadier-general of the line. Whenever a vacancy shall have occurred in the grade of brigadier-general of the line of the national guard of Montana, it shall be filled by the promotion of an officer of the line of the national guard of Montana of the next lower grade of the same branch or arm of the service.

History: En. Sec. 31, Ch. 191, L. 1919;
re-en. Sec. 1359, R. C. M. 1921.

77-131. (1360) Promotion while in the service of the United States. Whenever a vacancy shall have occurred in any commissioned grade, other than the lowest commissioned grade, of any regiment, separate battalion, or squadron, separate company, or similar separate unit of the national guard of Montana while in the service of the United States, such vacancy shall be filled by the promotion of the senior officer of the next lower grade on duty with such command who shall not in writing have waived such promotion. Every vacancy in the lowest commissioned grade in any such command while in such service shall be filled by the promotion of an enlisted man of such command upon the written recommendation of its commanding officer; provided, that any vacancy in any such command while in such service in any commissioned grade below that of major, may be filled upon the written recommendation of the commanding officer

of such command, by the transfer, assignment, or appointment of any officer of the national guard or national guard reserve of this state.

History: En. Sec. 32, Ch. 191, L. 1919;
re-en. Sec. 1360, R. C. M. 1921.

77-132. (1361) Officer may waive right to promotion. Any officer of the organized militia of Montana may, in writing, waive his right to any promotion to which his seniority shall entitle him, in which event the next senior officer who shall not in writing have waived such promotion shall be entitled thereto.

History: En. Sec. 33, Ch. 191, L. 1919;
re-en. Sec. 1361, R. C. M. 1921.

77-133. (1362) Officer to take oath. Every officer, duly commissioned or warranted, shall, within such time as may be provided by law or by regulations, take the oath of office prescribed by law, and give bond, if required. In case of neglect or refusal so to do, he shall be considered to have resigned such office, and a new appointment may be made as provided by law.

History: En. Sec. 34, Ch. 191, L. 1919;
re-en. Sec. 1362, R. C. M. 1921.

Militia § 7.

40 C.J. Militia § 32.

77-134. (1363) Oath, form of. The oath of office for commissioned officers in the organized militia of Montana shall be substantially as follows: "I, _____, do solemnly swear that I will support and defend the constitution of the United States and the constitution of the state of Montana, against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of Montana; that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of _____ in the national guard of the United States and of the state of Montana upon which I am about to enter, so help me God."

History: En. Sec. 35, Ch. 191, L. 1919;
re-en. Sec. 1363, R. C. M. 1921.

77-135. (1364) Dismissal of officers. The governor may dismiss any commissioned officer of the organized militia of Montana for any of the following reasons:

1. Conviction of an infamous crime.
2. Absence from his command for more than thirty days without proper leave.
3. Sentence of dismissal by court-martial, duly approved.

And the governor may discharge any commissioned officer of the organized militia of Montana for any of the following reasons:

1. Upon muster out of the organization to which such officer is then assigned.
2. Acceptance of resignation of such officer; provided, that no officer shall be discharged or his resignation accepted while under arrest or against whom military charges have been preferred, or until he shall have turned over to his successor or satisfactorily accounted for all state and

federal moneys and military property for which he shall have been accountable or responsible.

3. Removal of his actual residence to such distance from the station of his command as to render it impracticable for him to perform the duties of his office.

4. Incompetence or unfitness for military service as determined by the duly approved findings of an efficiency board appointed for that purpose.

History: En. Sec. 36, Ch. 191, L. 1919; Militia \Rightarrow 7.
re-en. Sec. 1364, R. C. M. 1921. 40 C.J. Militia § 38.
36 Am. Jur. 223, Military, § 61.

77-136. (1365) Seniority of officers. Upon the date this act becomes effective, or as soon thereafter as practicable, it shall be the duty of the commander-in-chief to assign to each commissioned officer of the active list of the national guard of Montana a number, assigning to the senior officer of each grade number one and continuing lineally thereafter in such grade in order of seniority as of the date of commission in the grade held by each officer on the day this act becomes effective. Thereafter seniority in any given grade shall be determined by the greatest length of continuous service as an officer of the national guard of Montana, said service to be calculated from the day this act becomes effective. If two or more officers of the same grade have equal length of continuous service as commissioned officers of the national guard of Montana, calculated from the date this act becomes effective, seniority between them shall be determined in the grade held by them by service as officers of the active list performed subsequent to the date this act becomes effective. The rank of any officer who shall receive his first commission in the national guard of Montana after this act becomes effective, shall be determined in the grade to which appointed by length of service as an officer of the active list, performed subsequent to the date this act becomes effective.

History: En. Sec. 37, Ch. 191, L. 1919; Militia \Rightarrow 7.
re-en. Sec. 1365, R. C. M. 1921. 40 C.J. Militia § 24 et seq.

77-137. (1366) Retirement of officers. Commissioned officers of the national guard of Montana shall be retired by order of the commander-in-chief with the grade and rank respectively held by them at the time of such retirement for the following reasons:

1. Upon reaching the age of sixty-four years.
2. Unfitness for military service by reason of physical disability.
3. Upon request, after at least five years' continuous service as officers in the national guard of Montana.

Retired officers shall draw no pay or allowance except when on duty.

They shall be subject only to temporary detail by the commander-in-chief, and while on duty shall receive the same pay and allowances as officers of the same rank on the active list. On all occasions of duty or ceremony, retired officers shall take rank next below officers of the same grade on the active list.

History: En. Sec. 38, Ch. 191, L. 1919; Militia \Rightarrow 7.
re-en. Sec. 1366, R. C. M. 1921. 40 C.J. Militia § 37.

77-138. Retirement of commissioned officers of national guard. When a commissioned officer of the national guard of Montana shall have reached

the age of sixty-four years, he shall be retired from active duty and placed on the retired list.

History: En. Sec. 1, Ch. 89, L. 1943.

77-139. Voluntary retirement. Any officer who has served as a commissioned officer for fifteen years in the military service of the state, may, upon his own application, in the discretion of the governor, be retired and placed upon the retired list. Service as a commissioned officer in the military or naval or military and naval service of the United States in time of war, not exceeding five years in all, shall be considered as state service in computing length of state service for the purposes of this section.

History: En. Sec. 2, Ch. 89, L. 1943.

77-140. Physical disability. When a commissioned officer is incapacitated for active service by reason of physical disability, and such physical disability is certified by a medical officer of the United States army or the national guard of this state, or the national guard of another state or territory, who is duly recognized as such medical officer by the laws of the United States governing federal recognition of the national guard of the respective states and territories, after examining such officer as prescribed by the regulations of the national guard bureau of the United States, such officer shall be retired or discharged as the governor may determine.

History: En. Sec. 3, Ch. 89, L. 1943.

77-141. Increase in rank. Whenever a commissioned officer is retired from active service in the national guard of this state, as above provided, he shall be placed on the retired list with an increase in rank of one or more grades above that held by him at the date of the retirement as the governor may direct, but in no case above the grade of major general.

History: En. Sec. 4, Ch. 89, L. 1943.

77-142. Detail to active duty. The governor may detail, with their own consent, officers of the retired list to active duty and return them to the retired list in his discretion. Officers retired for age or physical disability shall not be detailed to command troops, but only to perform duties of staff corps or departments, or to sit on boards, except that in time of war or other emergency, or imminent danger thereof, such retired officers may be detailed by the governor to perform any military duty designated by him.

History: En. Sec. 5, Ch. 89, L. 1943.

77-143. Pay while on retired list. This act shall not provide for, nor form the basis of any pay, compensation, pension, or other emolument of any kind or character to officers so placed upon the retired list, except that when such officers shall be detailed by the governor to perform duties as provided in section 77-142, they shall be entitled to the same pay and allowance as officers of like grade on the active list while performing such duties.

History: En. Sec. 6, Ch. 89, L. 1943.

77-144. Act is retroactive. This act shall be retroactive so as to apply to officers of the national guard of Montana who have been heretofore discharged by reason of age or incapacity due to physical disability as above

provided and such officers shall be placed on the retired list as provided by this act.

History: En. Sec. 7, Ch. 89, L. 1943.

77-145. (1367) Reserves. The national guard reserve of this state shall respectively be organized by the governor in regulations conforming with the laws, rules, and regulations of the United States. It shall consist of such organization, officers, and enlisted men as the governor shall prescribe. No commissioned officer shall be transferred or furloughed to the national guard reserve without his written consent, except as otherwise expressly provided by law. Officers of the retired list of the organized militia of Montana may be transferred to the national guard reserve, under such regulations as the governor may prescribe. Any officer of the national guard reserve may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his grade, and in such event his service in reserve shall not be counted in computing total length of service for relative seniority.

History: En. Sec. 39, Ch. 191, L. 1919; Militia 3.
re-en. Sec. 1367, R. C. M. 1921. 40 C.J. Militia § 15 et seq.

77-146. (1368) Period of enlistment. Hereafter the period of enlistment in the national guard of Montana shall be for six years, the first three years of which shall be in an active organization and the remaining three years in the national guard reserve. Qualifications for enlistment or re-enlistment, and the forms of oaths and contracts of enlistment or re-enlistment, shall be as prescribed by the governor in accordance with federal laws and regulations. In the national guard, the privilege of continuing in active service during the whole of an enlistment period, and of re-enlisting in said service, shall not be denied by reason of anything contained in this act; provided, when a man re-enlists in the organized militia of Montana within thirty days from the date of the expiration of his prior enlistment, or within thirty days from the date of his discharge, his term of service shall be considered as continuous, and shall be so dated; provided, that in time of peace, a man who enlists in the Montana national guard shall have been a resident of the state of Montana for the period of one year prior to his enlistment, unless he holds an honorable discharge from some branch of the military or naval service of the United States, or from the United States marine corps.

History: En. Sec. 40, Ch. 191, L. 1919; 40 C.J. Militia § 49.
re-en. Sec. 1368, R. C. M. 1921. Enlistment or mustering of minors. 137
ALR 1467.

Militia 9.

77-147. (1369) Discharge of enlisted men. An enlisted man discharged from service in the organized militia of Montana shall receive a discharge in writing in such form and of such classification as is or shall be prescribed by law or regulations, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by competent authority.

History: En. Sec. 41, Ch. 191, L. 1919; Militia 10.
re-en. Sec. 1369, R. C. M. 1921. 40 C.J. Militia § 50.

77-148. (1370) Uniform allowance of officers. Every commissioned officer of the organized militia of Montana shall, within sixty days from the date

of the order whereby he shall have been appointed, provide himself, at his own expense, with the arms, uniforms, and equipments prescribed by the governor for his rank and assignment.

There shall be audited and paid annually on the first day of April in each year, to each properly armed, uniformed, and equipped officer of the active service of the organized militia of Montana, a uniform allowance of thirty-five dollars for dismounted officers and fifty dollars for mounted officers.

History: En. Sec. 42, Ch. 191, L. 1919; Militia 13.
re-en. Sec. 1370, R. C. M. 1921. 40 C.J. Militia § 40.

77-149. (1371) Property to remain public property. All property issued to organizations and members of the organized militia of Montana shall be and remain public property.

History: En. Sec. 43, Ch. 191, L. 1919; Militia 13.
re-en. Sec. 1371, R. C. M. 1921. 40 C.J. Militia § 54 et seq.

Cross-Reference

Retaining or selling equipment of militia, secs. 94-1515, 94-1516.

77-150. (1372) Uniforms, etc., exempt. The military uniforms, arms, equipment, and mounts of members of the organized militia of Montana shall be exempt from execution and taxation.

History: En. Sec. 44, Ch. 191, L. 1919; Exemptions 41; Taxation 213.
re-en. Sec. 1372, R. C. M. 1921. 35 C.J.S. Exemptions §§ 32, 57; 61 C.J. Taxation § 450 et seq.

77-151. (1373) Claims against national guard appropriation. All bills, claims, and demands against the national guard appropriation shall be certified or verified in the manner prescribed by regulations promulgated by the governor, and shall be audited and approved by the adjutant-general and, if allowed, by the state board of examiners, shall be paid by the state treasurer upon the warrant of the state auditor from the national guard appropriation; provided, however, that in all cases where the organized militia or any part thereof is called into the service of the state in case of war, riot, insurrection, invasion, breach of the peace, or in aid of the civil authorities, warrants for allowed pay and expenses for such service shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund, on the order of the governor.

History: En. Sec. 45, Ch. 191, L. 1919; States 169 et seq.
re-en. Sec. 1373, R. C. M. 1921. 59 C.J. States § 429 et seq.

77-152. (1373.1) Payment of part of Spanish-American War fund to quartermaster of the United Spanish War Veterans, department of Montana. That the governor remain the trustee of the Spanish-American War fund; that from and after the passage of this act the said trustee, in the usual manner of paying funds from this account, shall pay, out of the interest on investments made with the money which remained of a fund appropriated by the United States government on June 25, 1908, to pay the Montana national guard from the time of call until muster into the service of the United States for the Spanish-American war, to the quartermaster of the United Spanish war veterans, department of Montana, the sum of two hundred thirty-seven and 50/100 dollars (\$237.50) on July 31st

and two hundred thirty-seven and 50/100 dollars (\$237.50) on January 31st of each year for the current use of said department.

History: En. Sec. 1, Ch. 99, L. 1927. Militia 4. 40 C.J. Militia § 75 et seq.

77-153. (1374) Buying and receiving state property prohibited. If any person shall purchase or receive in pawn or pledge any military property of the state of Montana or of the United States, he shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to imprisonment not exceeding one year, or fined not exceeding three hundred dollars, or by both such fine and imprisonment.

History: En. Sec. 46, Ch. 191, L. 1919; Militia 13.
re-en. Sec. 1374, R. C. M. 1921. 40 C.J. Militia § 78.

77-154. (1375) Pay of officers and enlisted men. Commissioned officers while on duty pursuant to the orders of the governor (other than at assemblages for drill or instruction, or on examining boards at or in the vicinity of their home stations, or when called or ordered out by the president of the United States), and while on duty in aid of the civil authorities pursuant to the lawful orders of the governor, shall receive the same pay and allowances as officers of the United States of the same grade; provided, that for travel only actual necessary expenses shall be allowed.

While on duty pursuant to the orders of the governor (other than at assemblages for drill or instruction at or in the vicinity of their home stations, or when called or ordered out by the president of the United States), and while on duty in aid of the civil authorities pursuant to the lawful orders of the governor, enlisted men of the national guard of Montana shall receive pay at rates equivalent to twice those allowed for corresponding grades in the United States army.

This schedule of pay shall apply only to the first thirty days of any tour of duty, and after the thirtieth day of any such tour, officers and men shall receive the pay and allowances of officers and men in the regular service of the United States of corresponding organizations and grades.

In addition to the pay herein provided the governor, or such other official as may be designated by federal authority, is authorized to receive and disburse, in accordance with federal laws and regulations, any moneys which may be appropriated by the Congress of the United States and allotted to the state of Montana for the payment of officers and enlisted men of the organized militia, as reimbursement for expenses incurred in and compensation for the time devoted to military training during times of peace.

History: En. Sec. 47, Ch. 191, L. 1919; 40 C.J. Militia §§ 40, 51.
re-en. Sec. 1375, R. C. M. 1921. 36 Am. Jur. 216, Military, § 48.

Minor's right to wages or similar payments for enlistment or military services.
137 ALR 1491.

Militia 11.

77-155. (1376) Pensions. Every member of the organized militia of Montana, who shall be wounded or disabled while on duty in the service of the state, shall be taken care of and provided for at the expense of the state, and if permanently disabled, shall receive the like pensions or rewards that persons under similar circumstances in the military service of the United

States receive from the United States; provided, that no pension shall be granted for any disability received while in the service of the United States, or while proceeding to or returning from such service. Before the name of any person is placed upon the pension roll under this section proof shall be made, under such regulations as the governor shall from time to time prescribe, that the applicant is entitled to such pension.

History: En. Sec. 48, Ch. 191, L. 1919; Pensions 2.
re-en. Sec. 1376, R. C. M. 1921. 48 C.J. Pensions § 9.

77-156. (1377) Camp duty. The governor shall cause the organized militia of Montana to perform for at least five consecutive days in each year camp duty, field maneuvers, or such other duty as in his judgment will best promote the discipline and efficiency of the force.

History: En. Sec. 49, Ch. 191, L. 1919; Militia 16.
re-en. Sec. 1377, R. C. M. 1921. 40 C.J. Militia § 68.

77-157. Leave of absence of state employees attending training camp or similar training program. That any person who is a member of the organized National Guard of the state of Montana or who is a member of the organized or unorganized reserve corps or forces of the United States Army, Navy, Marine Corps, or Coast Guard, which now exist or may be created at any time in the future by proper authority, and who is an appointee of or employee of the state of Montana, or any of its departments, or any county or city within the state, shall be given leave of absence with pay for attending regular encampments, training cruises, and similar training programs authorized by the secretary of war of the United States for the Montana National Guard or by the proper legal authority in charge of the reserve corps or forces of the United States Army, Navy, Marine Corps, or Coast Guard while in attendance at such annual encampment, training cruise, and similar training program, or without the time being charged against him on his annual vacation.

History: En. Sec. 1, Ch. 160, L. 1937; Officers 55(1), 94.
amd. Sec. 1, Ch. 132, L. 1947. 46 C.J. Officers §§ 117 et seq., 233 et seq.

77-158. (1378) Exemption from arrest—privileges of militia. No person belonging to the military forces of this state shall be arrested under any civil process while going to, remaining at, or returning from any place at which he may be required to attend military duty. Any members of the organized militia parading, or performing any duty according to the law, shall have the right of way in any street or highway through which they may pass, and while on field duty shall have the right to enter upon, cross, or occupy any uninclosed lands, or any inclosed lands where no damage will be caused thereby; provided, that the carriage of the United States mail and the legitimate functions of the police and the progress and operations of fire departments shall not be interfered with thereby.

History: En. Sec. 50, Ch. 191, L. 1919; Arrest 60; Militia 19.
re-en. Sec. 1378, R. C. M. 1921. 6 C.J.S. Arrest § 2; 40 C.J. Militia § 115 et seq.

77-159. (1379) Interference with employment. A person who, either by himself or with another, wilfully deprives a member of the organized militia of Montana of his employment, or prevents, by himself or another, such member being employed, or obstructs or annoys said member or his

employer in his trade, business, or employment because he is such member, or dissuades any person from enlisting in said organized militia by threat or injury to him in his employment, trade, or business in case he shall so enlist shall be guilty of a misdemeanor, and on conviction thereof shall be fined in a sum not exceeding one hundred dollars, or imprisonment in the county jail not more than thirty days, or shall suffer both such fine and imprisonment.

History: En. Sec. 51, Ch. 191, L. 1919; Master and Servant 342.
re-en. Sec. 1379, R. C. M. 1921. 40 C.J. Militia §§ 8, 125.

77-160. (1380) Allowances for incidental expenses. Each commanding officer shall be entitled to receive an allowance for the incidental expenses of his command, payable quarterly in advance according to the following schedule: Companies, troops, batteries, and like units, not to exceed fifty dollars per month; bands, not to exceed ten dollars per month; regiments and like units, not to exceed twenty-five dollars per month.

For the first quarter of each biennial period, each officer entitled to a quarterly allowance under this section shall be entitled to receive in advance the maximum allowance in full, but with his claim therefor he shall make remittance of the balance, if any, remaining unexpended from the last previous quarter, such remittance to be transmitted by the adjutant-general to the state treasurer, and for each succeeding quarter of each biennial period each such officer shall be entitled to receive such sum, not more than the maximum allowance above prescribed, as he shall have expended for authorized expenses of his command during the next preceding quarter. Each claim for quarterly allowance shall include an account current showing the items of expenditure, and shall be accompanied by sub-vouchers for all items, each voucher stating definitely the nature and amount of the expenditure evidenced thereby.

History: En. Sec. 52, Ch. 191, L. 1919; Militia 11.
re-en. Sec. 1380, R. C. M. 1921. 40 C.J. Militia § 40.

77-161. (1381) Transportation and subsistence. There shall be provided by the state transportation for all officers, and transportation and subsistence for all enlisted men who shall be ordered out for encampment, field duty, or stated parades, or assembled for duty in case of riot, tumult, breach of the peace, war, insurrection, invasion, or imminent danger thereof. Necessary transportation, quartermasters' stores, and subsistence for troops when ordered on duty shall be contracted for by the proper officers and paid for as other military bills. There shall be allowed from the military fund for each day's service the sum of two dollars per man for each horse for every mounted officer and mounted orderly, and all members of such other organizations of the national guard of Montana as are required to be mounted. Horses not furnished by officers or men shall be rented by the state at a cost not exceeding two dollars per day for each horse.

History: En. Sec. 53, Ch. 191, L. 1919; Militia 4.
re-en. Sec. 1381, R. C. M. 1921. 40 C.J. Militia §§ 40, 51.

77-162. (1382) Authority of commanding officer. The commanding officer at any drill, parade, encampment, or other duty may cause those under his command to perform any military duty he shall require, and may place in arrest for the time of such drill, parade, encampment, or other duty,

any officer or enlisted man who shall disobey the orders of his superior officer, or in any way interrupt the exercises, and any other person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and he shall prohibit and prevent the sale or use of all spirituous liquors, wines, ale, or beer, or holding of huckster or auction sales, and all gambling, and remove disorderly persons beyond the limits of such parade or encampment, or beyond a distance of two miles therefrom, and he shall abate as common nuisances all disorderly places, and all such sales within such limits. Any person violating any of the provisions of this section, or any order issued in pursuance thereof, shall be guilty of a misdemeanor, and may be delivered at or before the termination of such duty to any peace officer, and shall be brought before the nearest court of competent jurisdiction for trial, and upon conviction thereof shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or shall suffer both such fine and imprisonment.

History: En. Sec. 54, Ch. 191, L. 1919; Militia \S 1.
 re-en. Sec. 1382, R. C. M. 1921. 40 C.J. Militia \S 39.

77-163. (1383) Warning for duty. Orders for duty may be oral or written. Officers and enlisted men may be warned for duty as follows: Either by stating the substance of the order, or by reading the order to the person warned, or by delivering a copy of such order to such person, or by leaving a copy of such order at his last known place of abode or business with some person of suitable age and discretion, or by sending a copy of such order or notice containing the substance thereof to such man by mail, directed to him at his last known place of abode or business. Orders may be transmitted by telegraph or telephone. Such warning may be given by any officer or enlisted man. The officer or enlisted man giving such warning shall, when required, make a return thereof, containing the names of persons warned and the time, place, and manner of warning. Such returns shall be verified on oath and shall be prima facie evidence, on the trial of any person returned as a delinquent, of the facts therein stated.

History: En. Sec. 55, Ch. 191, L. 1919; Militia \S 14.
 re-en. Sec. 1383, R. C. M. 1921. 40 C.J. Militia \S 63.

CHAPTER 2

MILITARY COURTS

- Section 77-201. Military tribunals—kinds.
 77-202. Military courts of the organized militia.
 77-203. General courts-martial.
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 77-210. Witnesses.
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 77-214. "Officer" and "enlisted man" defined.

77-201. (1384) Military tribunals—kinds. The military tribunals of the state of Montana shall be of two kinds, viz.:

1. Courts-martial for the trial of offenders against the military law; and
2. Courts of inquiry for examining transactions of, or accusations or imputations against, officers or enlisted men of the organized militia of Montana.

All such courts shall be composed of commissioned officers only. All commissioned officers of the organized militia of Montana shall be eligible for detail to such courts, but no officer will be detailed for the trial of an officer superior to himself in rank when it can be avoided.

History: En. Sec. 56, Ch. 191, L. 1919;
re-en. Sec. 1384, R. C. M. 1921.

36 Am. Jur. 244, Military, §§ 87 et seq.
Acquittal or conviction in a military tribunal as bar to prosecution in the state courts based on the same acts, or vice versa. 16 ALR 1247.

Militia⊕21.

40 C.J. Militia § 81 et seq.

77-202. (1385) Military courts of the organized militia. The military courts of the organized militia of the state of Montana shall be of the following classes:

1. General courts-martial.
2. Special courts-martial.
3. Summary courts-martial.

They shall be respectively constituted like and have cognizance of the same subjects and possess like powers, except as to punishments, as similar courts provided for by the laws and regulations of the United States, and the proceedings of such courts shall follow the forms and modes of procedure prescribed for similar courts by the law and regulations of the United States. They may be convened by order specifying that they shall sit either for the trial of specified offenses or offenders, or for the trial of all offenses or offenders that may be lawfully brought before them, either during a specified period of time or until further order of the convening or superior authority.

History: En. Sec. 57, Ch. 191, L. 1919;
re-en. Sec. 1385, R. C. M. 1921.

Militia⊕21.

40 C.J. Militia § 81 et seq.

77-203. (1386) General courts-martial. General courts-martial may be convened by order of the governor and may consist of any number of officers from five to thirteen, inclusive. The decision of the appointing authority as to the number of officers to compose such court shall be conclusive. When from any cause a general court-martial is reduced below the minimum of five officers, the remaining number will direct the judge-advocate to report the fact to the convening authority and await further orders. Such courts shall have the power and jurisdiction to impose fines not exceeding two hundred dollars; to sentence to forfeiture of pay and allowances; to reprimand; to dismissal or dishonorable discharge from the service; to reduction of noncommissioned officers to the ranks; to reduction in rank or rating; or any two or more of such punishments may be combined in the sentence imposed by such courts.

History: En. Sec. 58, Ch. 191, L. 1919;
re-en. Sec. 1386, R. C. M. 1921.

77-204. (1387) Special courts-martial. In the national guard of Montana the commanding officer of each garrison, post, camp, or other place, brigade, regiment, detachment, battalion, or other detached command, may appoint special courts-martial for his command; but such special courts-martial may in any case be appointed by a superior authority when by the latter deemed desirable. Special courts-martial shall have the power to try any person subject to military law, except a commissioned officer, for any crime or offense made punishable by the military laws of the United States or of the state of Montana, and such special courts-martial shall have the same powers of punishment as do general courts-martial, except that fines imposed by such special courts-martial shall not exceed one hundred dollars. Such special courts-martial shall consist of any number of commissioned officers, from three to five, inclusive.

History: En. Sec. 59, Ch. 191, L. 1919;
re-en. Sec. 1387, R. C. M. 1921.

77-205. (1388) Summary court officer. The commanding officer of each garrison, fort, post, or other place, regiment, or corps, detached battalion, company, or other detachment of the national guard of Montana, may appoint for such place of command a summary court to consist of one officer, who shall have power to administer oaths and try enlisted men of such place or command for breaches of discipline and violations of laws governing such organizations; and said court, when satisfied of the guilt of such soldier, may impose fines not exceeding twenty-five dollars for any single offense, may sentence non-commissioned officers to reduction to the ranks, and may sentence to forfeiture of pay and allowances. The proceedings of such court shall be informal, and the minutes thereof shall be the same as prescribed for similar courts of the regular army of the United States.

History: En. Sec. 60, Ch. 191, L. 1919; Militia § 14.
re-en. Sec. 1388, R. C. M. 1921. 40 C.J. Militia § 81 et seq.

77-206. (1389) Sentence to confinement. All military courts of the organized militia of Montana shall have power to sentence to confinement in lieu of fines authorized to be imposed; provided, that such sentence of confinement shall not exceed one day for each dollar of fine authorized.

History: En. Sec. 61, Ch. 191, L. 1919;
re-en. Sec. 1389, R. C. M. 1921.

77-207. (1390) Sentence, when to be approved by governor. No sentence of dismissal or dishonorable discharge from the service of the organized militia of Montana not in the service of the United States, imposed by any military court, shall be executed until approved by the governor.

History: En. Sec. 62, Ch. 191, L. 1919;
re-en. Sec. 1390, R. C. M. 1921.

77-208. (1391) Jurisdiction of military courts. Military courts shall have jurisdiction, subject to the limitations imposed by law, at all times and in all places, over officers and enlisted men of the organized militia of Montana, and over members of the unorganized militia of Montana who shall be under orders for military duty, for all military offenses.

History: En. Sec. 63, Ch. 191, L. 1919;
re-en. Sec. 1391, R. C. M. 1921.

77-209. (1392) Evidence in military courts. Every military court shall have the same power to compel by subpoena, by subpoena duces tecum, and by attachment, the attendance of witnesses, both civilian and military, and the production of books, papers, and documents, and to punish for contempt a witness duly subpoenaed for non-attendance or refusal to be sworn or testify, or to produce books, papers, and documents, as is possessed by the superior courts of the state. Military courts shall also have power to take or cause to be taken the depositions of witnesses who cannot reasonably be produced at the trial, to the same extent as the superior courts aforesaid.

History: En. Sec. 64, Ch. 191, L. 1919;
re-en. Sec. 1392, R. C. M. 1921.

77-210. (1393) Witnesses. Every person not belonging to the organized militia of Montana who, having been duly subpoenaed to appear as a witness before a military court, shall have wilfully neglected or refused to appear, or refused to qualify as a witness or to testify or produce documentary evidence which such person shall have been legally subpoenaed to produce, and every sheriff, constable, or jailor who shall have received a lawful writ, mandate, subpoena, or other process of any military court, and who shall have refused or wilfully or negligently failed to execute or serve the same, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the state of Montana; and it shall be the duty of the prosecuting attorney of any county, on the certification of the facts to him by the president or senior member of the court, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than five hundred dollars, or imprisonment not to exceed six months, or both, at the discretion of the court; provided, that no witness shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him.

History: En. Sec. 65, Ch. 191, L. 1919;
re-en. Sec. 1393, R. C. M. 1921.

77-211. (1394) Process. Military courts are empowered to issue all processes and mandates, including writs and warrants necessary and proper to carry into full effect the powers vested in said courts. Such writs and mandates may be directed to the sheriff of any county, or the constables or marshals of any precinct, city, or town, and shall be in such form as may from time to time be prescribed in regulations. It shall be the duty of all such officers to whom any such process or mandate may be so directed to forthwith execute the same, and make return of their acts thereunder, according to the requirements of such process or mandate. The keepers and wardens of all county and city jails shall receive the bodies of persons committed by the process or mandate of any military court, and shall confine them in the manner prescribed thereby and according to law. Any person may be committed to any county or city jail for failure to pay any fine under this act, and when so committed shall be credited upon each fine and assessed with the sum of one dollar for each day so confined.

History: En. Sec. 66, Ch. 191, L. 1919;
re-en. Sec. 1394, R. C. M. 1921.

77-212. (1395) Contempt of court. Any person who shall be guilty of disorderly, contemptuous, or insolent behavior in, or who shall use any insulting, or contemptuous, or indecorous language or expression to or before any military court, or any member of such court in open court, tending to interrupt its proceedings, or to impair the respect due to its authority, or who shall commit any breach of the peace, or make any noise or other disturbances directly tending to interrupt its proceedings, may be committed by warrant, under the hand of the president of the court, to the jail of the city or county in which said court shall sit, there to remain without bail in close confinement for a definite period not exceeding three days.

History: En. Sec. 67, Ch. 191, L. 1919;
re-en. Sec. 1395, R. C. M. 1921.

77-213. (1396) Fees and mileage. Fees and mileage allowed for the service of process and for civilian witnesses shall be the same as in civil actions. All expenditures necessary to carry the provisions of this act into effect are hereby authorized to be incurred and paid out of the appropriations for the maintenance of the organized militia of Montana.

History: En. Sec. 68, Ch. 191, L. 1919;
re-en. Sec. 1396, R. C. M. 1921.

77-214. (1397) "Officer" and "enlisted man" defined. Whenever used in the military code of the state of Montana and throughout this act, the word "officer" shall be understood to designate commissioned officers, and the words "enlisted men" shall be understood to designate members of the organized militia of Montana other than commissioned officers. The convictions and punishments mentioned in the military code of the state of Montana and in this act, unless otherwise specifically designated, shall be understood to be respectively convictions and punishments by military courts.

History: En. Sec. 69, Ch. 191, L. 1919; Militia 3, 7.
re-en. Sec. 1397, R. C. M. 1921. 40 C.J. Militia §§ 24, 41.

CHAPTER 3

ARTICLES GOVERNING MILITIA

Section 77-301. Articles governing militia.

77-301. (1398) Articles governing militia. The organized militia of Montana shall be governed by the following articles:

Article 1. Any officer who knowingly musters as an enlisted man a person who is not an enlisted man, shall be deemed guilty of knowingly making a false muster and punished accordingly.

Article 2. Every officer who knowingly makes a false return to any of his superior officers authorized to call for such returns, of the state of the organization under his command, or of the arms, ammunition, clothing, or other stores for which he shall be responsible or accountable, shall, on conviction thereof before a court-martial, be dismissed.

Article 3. Every officer shall be charged with the arms, accoutrements, ammunition, clothing, and other military stores for which he shall have given his receipt in writing, and shall be responsible in case of their being

lost, spoiled, or damaged otherwise than by unavoidable accident, or on actual service.

Article 4. Every officer who signs a false certificate relating to the absence or pay of an officer or enlisted man shall be dismissed from the service.

Article 5. Any officer who knowingly makes a false muster of man or horse, or who signs, or directs, or allows the signing of any muster-roll, knowing the same to contain a false muster, shall, upon proof thereof by two witnesses before a court-martial, be dismissed from the service, and shall thereby be disabled to hold any office or employment in the military service of the state of Montana.

Article 6. Any officer, who wilfully or through neglect, suffers to be lost, spoiled, or damaged, any military stores belonging to the United States or the state of Montana, shall make good the loss or damage, and shall suffer such punishment as a court-martial may direct.

Article 7. Any enlisted man who sells, or wilfully, or through neglect wastes the ammunition delivered to him, shall be punished as a court-martial may direct.

Article 8. Any enlisted man who sells, or through neglect loses or spoils any military property of the United States or the state of Montana, shall be punished as a court-martial may direct.

Article 9. Any officer or enlisted man who behaves himself with disrespect to his commanding officer shall be punished as a court-martial may direct.

Article 10. Any officer or enlisted man who, on any pretense whatsoever, strikes his superior officer, or draws or lifts up any weapon, or offers any violence against him, being in the execution of his office, or disobeys any lawful command of his superior officer, shall suffer such punishment as a court-martial may direct.

Article 11. Any officer or enlisted man who begins, excites, causes, or joins in any mutiny or sedition, shall suffer such punishment as a court-martial may direct.

Article 12. Any officer or enlisted man who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or having knowledge of any intended mutiny or sedition, does not, without delay, give information thereof to his commanding officer, shall suffer such punishment as a court-martial may direct.

Article 13. Every officer shall have power to part and quell all quarrels, frays, and disorders, whether among persons belonging to his own or another organization, and to order officers into arrest, and enlisted men into confinement, who take part in the same, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or draws a weapon upon him, shall be punished as a court-martial may direct.

Article 14. Any enlisted man who thinks himself wronged by any officer may complain to the immediate commander of said officer, who shall examine into said complaint and take proper measures.

Article 15. Any enlisted man who absents himself from duty without leave shall be punished as a court-martial may direct.

Article 16. Any officer or enlisted man who fails, except when prevented by sickness or other necessity, to repair at the fixed time to the appointed place of parade, exercise, or other rendezvous, or goes from the same without leave, before he is dismissed or relieved, shall be punished as a court-martial may direct.

Article 17. No enlisted man shall hire another to do his duty for him, or be excused from duty, except in cases of sickness, disability or leave of absence. Every enlisted man found guilty of hiring his duty, and the person so hired to do another's duty, shall be punished as a court-martial may direct.

Article 18. Every non-commissioned or petty officer who connives at such hiring of duty shall be reduced. Every officer who knows and allows such practices shall be punished as a court-martial may direct.

Article 19. Any officer who is found drunk on duty shall be dismissed from the service. Any enlisted man who so offends shall suffer such punishment as a court-martial may direct.

Article 20. Any sentinel who is found sleeping upon his post, or who leaves it before he is regularly relieved, shall suffer such punishment as a court-martial may direct.

Article 21. Any officer who, by any means whatsoever, occasions false alarms in camp, garrison, or quarters, shall suffer such punishment as a court-martial may direct.

Article 22. Any officer or enlisted man who misbehaves himself before the enemy, runs away, or shamefully abandons any fort, post, or guard which he is commanded to defend, or speaks words inducing another to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, shall suffer such punishment as a court-martial may direct.

Article 23. Every enlisted man who deserts shall be liable to serve for such period as shall, with the time he may have served previous to his desertion, amount to the full term of his enlistment; and such enlisted man shall be tried by a court-martial and punished, although the term of his enlistment may have elapsed previous to his being apprehended and tried.

Article 24. Any officer who, having tendered his resignation, quits his post or proper duties, without leave and with intent to remain permanently absent therefrom prior to notice of acceptance of the same, shall be deemed and punished as a deserter.

Article 25. Any officer or enlisted man who advises or persuades another officer or enlisted man to desert shall suffer such punishment as a court-martial may direct.

Article 26. All officers and enlisted men are to behave themselves orderly in quarters and on the march; and whoever commits any waste or spoil, or maliciously destroys any property whatsoever belonging to inhabitants of the United States or of the state of Montana, shall, besides such other penalties as he may be liable by law, be punished as a court-martial may direct.

Article 27. Any member of the organized militia of Montana:

(1) Who makes or causes to be made any claim against the United States or the state of Montana, or any officer thereof, knowing such claim to be false or fraudulent; or

(2) Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States or the state of Montana, or any officer thereof, knowing such claim to be false or fraudulent; or

(3) Who enters into any agreement or conspiracy to defraud the United States or the state of Montana, by obtaining or aiding others to obtain the allowance or payment of any false or fraudulent claim; or

(4) Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Montana, or against any officer thereof, makes or uses, or procures or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statement; or

(5) Who, for the purpose of obtaining or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Montana, or any officer thereof, makes, or procures or advises the making of, any oath to any pact or to any writing or other paper, knowing such oath to be false; or

(6) Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or the state of Montana, or any officer thereof, forges or counterfeits, or procures or advises the forgery or counterfeiting of any signature upon any writing or other paper, or uses, or procures or advises the use of any such signature, knowing the same to be forged or counterfeited; or

(7) Who, having charge, possession, custody or control of any money or other property of the United States or the state of Montana, furnished or intended for the military service thereof, knowingly delivers or causes to be delivered to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

(8) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state of Montana, furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained, and with intent to defraud the United States or the state of Montana; or

(9) Who steals, embezzles, knowingly and wilfully misappropriates, applies to his own use or benefit, or wrongfully sells or disposes of any ordnance, arms, ammunition, equipments, clothing, subsistence, stores, money, or other property of the United States or of the state of Montana, furnished or intended for the military service thereof; or

(10) Who knowingly purchases, or receives in pledge for any obligation or indebtedness, from any enlisted man, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence, stores, or other property of the United States or the state of Montana, such enlisted man, officer, or other person not having lawful right to sell or pledge the same,

Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may direct, or by any or all of said penalties.

And if any person, having committed any of the offenses aforesaid while a member of the organized militia of Montana, receives his discharge,

or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial, in the same manner and to the same extent as if he had not received such discharge nor been dismissed.

Article 28. Any officer who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. All crimes not capital, and all disorders and neglects, of which officers and enlisted men may be guilty, to the prejudice of good order and military discipline, though not mentioned in the foregoing articles, may be taken cognizance of by a court-martial as provided herein, according to the nature and degree of the offense and punished at the discretion of such court.

Article 29. When an officer is put in arrest for the purpose of trial, the officer by whose order he is arrested shall see that a copy of the charge on which he is to be tried is served upon him within ten days after his arrest, and that he is brought to trial within twenty days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said twenty days. If a copy of the charges be not served, or the arrested officer be not brought to trial, as herein required, the arrest shall cease. But officers released from arrest, under the provision of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest.

Article 30. For each general or special court-martial of the national guard the governor shall appoint a judge-advocate.

Article 31. When the requisite number of officers to form a general court-martial is not present at any station or detachment, the governor shall, in cases which require the cognizance of such court, thereupon order a court to be assembled at the nearest place where such trial can be conveniently held, and shall order the accused, with necessary witnesses, to be transported to the place where the said court shall be assembled.

Article 32. Officers shall be tried only by general court-martial.

Article 33. The judge-advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation:

"You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you between the state of Montana and the person to be tried, and that you will duly administer justice, without partiality, favor or affection, according to the provisions of the rules and articles for the government of the organized militia of the state of Montana, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge-advocate; neither will you disclose or discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course by the same. So help you God."

Article 34. When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court

shall administer to the judge-advocate an oath or affirmation in the following form:

"You, A. B., do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God."

All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form:

"You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God."

Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form:

"You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God."

Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form:

"You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God."

In case of affirmation the closing sentence of adjuration will be omitted.

Article 35. A court-martial may punish, at discretion, any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder.

Article 36. All members of a court-martial are to behave with decency and calmness.

Article 37. Members of a court-martial may be challenged by a prisoner, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time.

Article 38. When a prisoner, arraigned before a court-martial, from obstinacy and deliberate design stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if the prisoner had pleaded not guilty.

Article 39. The judge-advocate shall prosecute in the name of the state of Montana, but when the prisoner has made his plea, he shall so far consider himself counsel for the prisoner as to object to any leading questions to any witness, and to any question to the prisoner the answer to which might tend to incriminate himself.

Article 40. All persons who give evidence before a military court shall be examined on oath or affirmation in the following form: "You swear (or affirm) that the evidence you shall give, in the case now in hearing, shall be the truth, the whole truth, and nothing but the truth. So help you God."

Article 41. A court-martial shall for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just.

Article 42. Members of a court-martial, in giving their votes, shall begin with the youngest in commission.

Article 43. When a court-martial suspends an officer from command it may also suspend his pay and emoluments for the same time, according to the nature of his offense.

Article 44. No person shall be tried a second time for the same offense.

Article 45. No person shall be liable to be tried and punished by a court-martial for any offense which appears to have been committed more than two years before the issuing of the order for such trial, unless by reason of having absented himself, or of some other manifest impediment, he shall not have been amenable to justice within that period.

Article 46. No sentence of a general court-martial shall be carried into execution until the same shall have been approved by the governor.

Article 47. Every judge-advocate, or person acting as such, at any general court-martial, shall, with as much expedition as the opportunity of time and distance may admit, forward the original proceedings and sentence of such court to the adjutant-general.

Article 48. Every person tried by a general court-martial shall, upon proper demand therefor, be entitled to a copy of the proceedings and sentence of such court.

Article 49. A court of inquiry to examine into the nature of any transaction of, or accusation or imputation against, any officer or enlisted man may be ordered by the governor, and shall make a report of its findings to the governor within twenty days after its inquiry.

Article 50. The recorder or judge-advocate of a court of inquiry shall administer to the members the following oath:

"You shall well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you God."

After which the president of the court shall administer to the recorder or judge-advocate the following oath:

"You, A. B., do swear that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you God."

Article 51. A court of inquiry, and the recorder or judge-advocate thereof, shall have the same power to summon and examine witnesses as is given to general courts-martial and the judge-advocates thereof. Such witnesses shall take the same oath which is taken by witnesses before general courts-martial, and the party accused shall be permitted to examine and cross-examine them, so as to fully investigate the circumstances in question.

Article 52. A court of inquiry shall not give an opinion on the merits of the case inquired of unless specially ordered to do so.

Article 53. The proceedings of a court of inquiry must be authenticated by the signatures of the recorder or judge-advocate and the president thereof, and delivered to the adjutant-general or convening authority.

Article 54. The proceedings of a court of inquiry may be admitted as evidence by a court-martial in cases not extending to the dismissal of an officer; provided, that the circumstances are such that oral testimony can not be obtained.

Article 55. If, upon marches, or in quarters, different organizations of the national guard of Montana happen to join or do duty together, the officer highest in rank of the line by commission, there on duty or in quarters, shall command the whole, and give orders for what is needful

in the service, unless otherwise specially directed by the governor, according to the nature of the case.

Article 56. In case of death of any enlisted man, his commanding officer shall immediately secure all his effects in camp or quarters, and shall, in the presence of two other officers, make an inventory thereof, which he shall transmit to the office of the adjutant-general.

History: En. Sec. 70, Ch. 191, L. 1919; Militia \Rightarrow 14.
re-en. Sec. 1398, R. C. M. 1921. 40 C.J. Militia § 60 et seq.

Cross-Reference

Offenses relating to militia, sec. 94-4802.

CHAPTER 4

GENERAL PROVISIONS

- Section 77-401. Rifle ranges.
77-402. Armories.
77-403. Exemption of military men and veterans from jury duty and poll tax.
77-404. Travel on railroad not to exceed one cent per mile.
77-405. Prizes for marksmanship.
77-406. Articles of war of the United States to govern.
77-407. Unauthorized association forbidden.
77-408. Regulations governing armories, rifle ranges, etc.
77-409. Lease of property of the national guard.
77-410. Wrongful taking of government property from armory.
77-411. Governor to promulgate rules and regulations.
77-412. Use of insignia of military or secret orders prohibited.
77-413. When customs and usage of the United States army shall govern.
77-414. Emergency clause.

77-401. (1399) Rifle ranges. Under the direction of the governor, the adjutant-general shall, at the expense and in the name of the state, buy or lease, establish, equip, maintain, and control such rifle ranges, and issue such ammunition, transportation, and supplies as may be necessary to provide each organization of the organized militia of Montana with adequate means and opportunity for thorough instruction in rifle practice.

History: En. Sec. 71, Ch. 191, L. 1919; Militia \Rightarrow 13.
re-en. Sec. 1399, R. C. M. 1921. 40 C.J. Militia § 58 et seq.

77-402. (1400) Armories. The board of county commissioners of any county in the state of Montana, in which a company or companies of Montana national guard shall be organized and regularly stationed in such county, is hereby authorized to erect and provide in cities of ten thousand population or more an armory of sufficient size and suitable for the drill of such company or companies, and the preservation and keeping of the arms and equipment of such company or companies, and any city of ten thousand or more in population in Montana is hereby authorized and empowered to bear a pro rata part of the expense of erecting and providing said armory as may be agreed upon by the board of county commissioners [and the city council] of said city.

History: En. Sec. 72, Ch. 191, L. 1919; Militia \Rightarrow 17.
re-en. Sec. 1400, R. C. M. 1921. 40 C.J. Militia § 58 et seq.

Cross-Reference

Armory board, secs. 82-201 to 82-211.

77-403. (1401) Exemption of military men and veterans from jury duty and poll tax. Every commissioned officer and every enlisted man of the

national guard of Montana, the organized reserves of the national guard of Montana, the organized reserves of the army of the United States, and all persons receiving government compensation for disability received while serving with the United States army during the World War, shall be exempt from all jury duty, and from the payment of poll tax, or head tax, of every description, during the term of his service in the national guard, the organized reserves of the national guard or the organized reserves of the army of the United States, or while receiving government compensation as aforesaid.

History: En. Sec. 73, Ch. 191, L. 1919;
re-en. Sec. 1401, R. C. M. 1921; amd. Sec. 1,
Ch. 51, L. 1925.

Cross-Reference

Exemption from jury duty, sec. 93-1304.

References

Cited or applied as section 1068, revised codes, before amendment, in *Pohl v. Chicago, Milwaukee & St. Paul Ry. Co.*, 52 M 572, 576, 160 P 515.

Juries↪55; Taxation↪106.
40 C.J. Militia § 8.

77-404. (1402) Travel on railroad not to exceed one cent per mile. From and after the passage and approval of this act, all railroads or railroad companies operating and doing business in the state of Montana shall carry the troops of the state of Montana, or officers or enlisted men thereof, while in the performance of their military duties within the state, at a rate of not to exceed one cent per mile.

History: En. Sec. 74, Ch. 191, L. 1919;
re-en. Sec. 1402, R. C. M. 1921.

Carriers↪258.
13 C.J.S. Carriers § 617.

77-405. (1403) Prizes for marksmanship. The adjutant-general is authorized to expend from the appropriations for the maintenance of the organized militia of Montana the sum of five hundred dollars per annum for prizes for marksmanship, under such regulations as may be prescribed by the governor.

History: En. Sec. 75, Ch. 191, L. 1919;
re-en. Sec. 1403, R. C. M. 1921.

Militia↪14.
40 C.J. Militia § 61 et seq.

77-406. (1404) Articles of war of the United States to govern. Whenever any portion of the militia of the state shall be on duty under or pursuant to orders of the governor, or whenever any part of the militia shall be ordered to assemble for duty in time of war, insurrection, invasion, or imminent danger thereof, breach of the peace, tumult, riot, public danger, or resistance to process, the articles of war and regulations for the government of the army of the United States, so far as applicable and not in conflict with any rule or regulation herein prescribed, and with such modifications as the governor may prescribe, shall be considered in force and regarded as a part of this act until such forces shall be duly relieved from such duty.

History: En. Sec. 76, Ch. 191, L. 1919;
re-en. Sec. 1404, R. C. M. 1921.

77-407. (1405) Unauthorized association forbidden. It shall not be lawful for any body of men, other than the national guard or troops of the United States, to associate themselves together as a military company with arms, without the consent of the governor; but members of social and benevolent associations are not prohibited from wearing swords. Every

person who shall associate with others in violation of this section shall be guilty of a misdemeanor.

History: En. Sec. 77, Ch. 191, L. 1919; Militia 22.
re-en. Sec. 1405, R. C. M. 1921. 40 C.J. Militia § 125.

77-408. (1406) Regulations governing armories, rifle ranges, etc. The commander-in-chief shall promulgate in general orders such regulations for the use of armories, rifle ranges, and other real property owned or leased by the state for military purposes, as may be proper; provided, that no armory shall be used for any other than a strictly military purpose without the recommendation of the officer in charge thereof; and further provided, that all civilian rifle clubs affiliated with the national rifle association of America shall be permitted the use of the rifle ranges in the armories owned by the state at least one night each week, under such regulations as the commander-in-chief may direct.

History: En. Sec. 78, Ch. 191, L. 1919; Militia 17.
re-en. Sec. 1406, R. C. M. 1921. 40 C.J. Militia § 58 et seq.

77-409. (1407) Lease of property of the national guard. All armories and rifle ranges, and all property, real or personal, used by the national guard and not owned by the state of Montana or the United States, shall be leased or rented to the state upon such terms and conditions as shall be approved by the commander-in-chief.

History: En. Sec. 79, Ch. 191, L. 1919;
re-en. Sec. 1407, R. C. M. 1921.

77-410. (1408) Wrongful taking of government property from armory. Any enlisted man taking any government property from an armory, without the written consent of his company commander, shall be considered as appropriating government property to his own use, and may be tried in any court of competent jurisdiction, and on conviction thereof shall suffer a fine in any sum not exceeding one hundred dollars, together with the cost of such government property, or imprisonment in the county jail for a period not exceeding sixty days, or shall suffer both such fine and imprisonment.

History: En. Sec. 80, Ch. 191, L. 1919; Unlawful possession or sale of arms,
re-en. Sec. 1408, R. C. M. 1921. sec. 94-1515.

Cross-References

Retaining or selling equipment of militia, secs. 94-1515, 94-1516. Militia 20.
40 C.J. Militia § 66 et seq.

77-411. (1409) Governor to promulgate rules and regulations. The governor shall promulgate in general orders such rules and regulations and amendments thereto, not inconsistent with the law, as he may deem necessary. Such rules and regulations, when so promulgated, shall have the same force and effect as though herein enacted.

History: En. Sec. 81, Ch. 191, L. 1919; Militia 14.
re-en. Sec. 1409, R. C. M. 1921. 40 C.J. Militia § 23.

77-412. (1410) Use of insignia of military or secret orders prohibited. Every person who shall wilfully wear the badge, button, insignia, or rosette of any military order, or of any secret order or society, or any similitude thereof, or who shall use any such badge, button, insignia, or rosette to obtain aid or assistance, or any other benefit or advantage, unless he shall be

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entitled to so wear or use the same under the constitution, by-laws, rules and regulations of such order or society, shall be guilty of a misdemeanor.

History: En. Sec. 82, Ch. 191, L. 1919; Militia \Rightarrow 14.
re-en. Sec. 1410, R. C. M. 1921. 40 C.J. Militia § 125.

Cross-Reference

Wearing of uniform without authority,
sec. 94-35-253.

77-413. (1411) When customs and usage of the United States army shall govern. All matters relating to the organization, discipline, and government of the national guard, not otherwise provided for in this act or in the general regulations, shall be decided by the custom and usage of the United States army.

History: En. Sec. 83, Ch. 191, L. 1919; Militia \Rightarrow 14.
re-en. Sec. 1411, R. C. M. 1921. 40 C.J. Militia § 61 et seq.

77-414. (1412) Emergency clause. Whereas, the public peace and safety of the United States and of the state of Montana depend upon an adequate system of national defense; and

Whereas, the militia of the various states is an important element of the national defense; and

Whereas, by the constitution of the United States, authority is conferred upon Congress to provide for the calling forth the militia to execute the laws of the union, suppress insurrection, and repel invasion, and to provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be called into the service of the United States; and

Whereas, by the constitution of the United States, the authority of training the militia according to the discipline prescribed by Congress and the appointment of the officers thereof are reserved to the several states; and

Whereas, Congress, in accordance with the authority conferred upon it, has recently enacted certain laws providing for organizing, arming, and disciplining the militia, and for the governing of such part of them as may be called into the service of the United States, and has made appropriations of money and military supplies, accoutrements, and stores for the maintenance, support, equipment, and discipline of the militia, contingent upon compliance by the states respectively with the conditions set forth in said enactments; and

Whereas, said enactments have been duly and regularly approved by the president of the United States, and for some time past have been and now are in full force and effect; and

Whereas, it is the duty of the state of Montana and it is necessary for it forthwith to comply with said acts, and each of them, in order that its militia may be promptly qualified for the efficient service of both state and nation; and

Whereas, this act is a compliance therewith:

A public emergency is hereby declared to exist, and this act is necessary for the immediate preservation of the public peace and safety and the support of the state government and its existing public institutions, and shall take effect immediately.

History: En. Sec. 6, Ch. 191, L. 1919;
re-en. Sec. 1412, R. C. M. 1921.

Militia 2.
40 C.J. Militia § 12 et seq.

CHAPTER 5

SOLDIERS AND SAILORS PREFERENCE IN PUBLIC EMPLOYMENT

Section 77-501. Preference of soldiers and sailors in public employment.

77-501. (5653) Preference of soldiers and sailors in public employment.

In every public department, and upon all public works of the state of Montana, and of any county and city thereof, honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine Insurrection, and of the World War I, and men and women who were honorably discharged after serving in World War II, as well as the widow of any such veteran who served in World War II, and any disabled civilian recommended by the state rehabilitation bureau, shall be preferred for appointment and employment; age, loss of limb or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the business capacity, competency and education to discharge the duties of the position involved, and honorably discharged Union soldiers and sailors and their widows of the Civil War, the Spanish-American War, the Philippine Insurrection, and of the World War I, and men and women who were honorably discharged after serving in World War II, who have disabilities admitted by the veterans' administration of the United States to have been incurred in the service in any of said wars, where said disabilities do not interfere with the employment, said disabled veterans, and the widows of such disabled veterans, shall be given preference before the employment of able-bodied veterans as herein designated; provided, however, that none of the benefits of this act shall accrue to any person who refused to serve on active duty in the military service to which attached, or to take up arms in the defense of the United States; provided, however, that no persons, not a citizen of the United States, shall be employed by any state, city or county officer in any capacity if competent American labor is available; and, provided, further, that no person who has not been a resident of Montana for at least one (1) year immediately preceding an appointment shall be entitled to such preference; provided further, that for city or county employment no preference will be granted unless applicant under this act is also a resident of the city or town or county in which employment is sought.

Any person entitled to preference in this section who has applied for any appointment or employment upon public works of the state of Montana or of any county and city thereof, or in any public department of said state and who has been denied said employment or appointment and feels that the spirit of this act has been violated and that he is in fact qualified physically, mentally and possesses business capacity, competency and education to discharge the duties of the position applied for, shall have the right to petition by verified petition the district court of the state of Montana in the county in which the work is to be performed, setting forth the facts of his application, qualifications, competency and his honorable discharge or other qualifications warranting him to preference under this act, and upon the filing of such petition any judge in said court shall forthwith

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issue an order to show cause to the appointing authority directing said appointing authority to appear in said court at a specified time and place, not less than five (5) nor more than ten (10) days after the filing of said verified petition, to show cause, if any he has, why said veteran or person entitled to preference should not be employed by him and that said district court shall have jurisdiction upon the proper showing to issue its order directing and ordering said appointing authority to comply with this law in giving the preference herein provided.

History: En. Sec. 1, Ch. 211, L. 1921; re-en. Sec. 5653, R. C. M. 1921; amd. Sec. 1, Ch. 133, L. 1927; amd. Sec. 1, Ch. 66, L. 1937; amd. Sec. 1, Ch. 160, L. 1943; amd. Sec. 1, Ch. 223, L. 1947.

No Duty Where No Vacancy Exists

In a proceeding in mandamus to compel the mayor of a city to transmit the application of an honorably discharged World War veteran for the position of patrolman on the police force to the city police commission, held, that neither under this chapter nor under sec. 11-1803, relating generally to appointments to the force, is the mayor required to transmit such applications where no vacancy on the police force exists. *State ex rel. Montgomery v. Mayor of the City of Anaconda*, 112 M 275, 277, 114 P 2d 1046.

Veteran Appointee Must Possess Requisite Qualifications

In a proceeding in mandamus to compel a mayor to appoint a veteran to position of patrolman, held that this act merely provides that veterans be preferred, and though a veteran's application must be transmitted to the police commission by

the mayor when a vacancy exists unless he is convinced the veteran is not qualified, he may not be coerced by writ of mandate after his investigation reveals that the veteran is not qualified physically due to a back injury. The duty to appoint carries with it the duty to determine the requisite qualifications. *Horvath v. Mayor of The City of Anaconda*, 112 M 266, 268, 116 P 2d 874.

Operation and Effect

Veterans' preference act applies to office of city attorney. Application of *O'Sullivan*, 117 M 295, 305, 158 P 2d 306.

Id. The 1943 amendment so far as it attempted to confer authority upon the court to make an appointment and so far as it undertook to confer judicial power without notice and hearing was declared unconstitutional and void.

References

State ex rel. O'Sullivan v. District Court, ___ M ___, 172 P 2d 816.

Officers—10, 68.

46 C.J. Officers §§ 81 et seq., 164 et seq.

CHAPTER 6

RE-EMPLOYMENT OF PERSONS COMPLETING MILITARY OR NAVAL SERVICE

- Section 77-601. Re-employment of persons completing military or naval service.
 77-602. Duty of employer.
 77-603. Seniority and participation in other benefits.
 77-604. Procedure for enforcement of right.
 77-605. Duty of unemployment compensation department.
 77-606. Policy respecting members of communist party or German-American bund.

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77-601. Re-employment of persons completing military or naval service.

Any person inducted into the land or naval forces of the United States, as a result of the operation of the "selective training and service act of 1940", or the "national guard and reserve officers mobilization act", Pub. Act No. 783 and Pub. Res. No. 96, seventy-sixth congress, who has satisfactorily completed his period of training and service as attested by a certificate to that effect shall be re-employed in the position he left in order to perform such training and service if (1) he is still qualified to perform the duties of such position, (2) the position he formerly held was not a temporary one

and (3) he makes application for re-employment within forty days after he is retired from training service.

History: En. Sec. 1, Ch. 150, L. 1941.

77-602. Duty of employer. If such person was in the employ of a private employer, such employer shall restore such person to such position or to a position of like seniority, status and pay unless the employer's circumstances have so changed as to make it impossible or unreasonable to do so.

History: En. Sec. 2, Ch. 150, L. 1941.

77-603. Seniority and participation in other benefits. Any person who is restored to a position in accordance with this act shall be considered as having been on leave of absence during his period of training or service in the land or naval forces of the United States, and at the expiration of such period shall be entitled to be restored to his employment without loss of seniority, shall be entitled to participate in insurance or other benefits offered by the employer in accordance with established rules and practices relating to employees on leave of absence, and shall not be discharged from such position without cause within one year after restoration.

History: En. Sec. 3, Ch. 150, L. 1941.

77-604. Procedure for enforcement of right. In case any private employer refuses to re-employ any person entitled to re-employment under the provisions of this act, the district court of the judicial district, in which such private employer maintains his place of business shall have power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to such benefits to specifically require such employer to comply with this act, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by such employer's unlawful action. Upon application to the county attorney of the county in which such private employer maintains a place of business, by any person claiming to be entitled to redress under this act, shall appear and act as attorney for such person in the amicable settlement of the claim or in the filing of any motion, petition, or other appropriate pleading to specifically require such employer to comply with such provisions. No fees or court costs shall be taxed against the person applying for such benefits.

History: En. Sec. 4, Ch. 150, L. 1941.

77-605. Duty of unemployment compensation department. The re-employment division of the unemployment compensation department shall render aid in the replacement in their former positions of or in securing new positions for the persons mentioned in section 77-601.

History: En. Sec. 5, Ch. 150, L. 1941.

77-606. Policy respecting members of communist party or German-American bund. It is expressed policy of the legislature of the state of Montana that wherever a vacancy is caused in the employment rolls of any business or industry by reason of induction into the service of the United States of an employee pursuant to the provisions of said selective training act of 1940, or the national guard and reserve officers mobilization act such

vacancy shall not be filled by any person who is a member of the communist party or the German-American bund.

History: En. Sec. 6, Ch. 150, L. 1941.

CHAPTER 7

RESTORATION OF STATE AND OTHER EMPLOYEES TO POSITIONS OCCUPIED BEFORE INDUCTION INTO MILITARY SERVICE

- Section 77-701. Employees of state or its subdivisions inducted into military service to be re-instated in employment.
 77-702. Application for re-employment.
 77-703. Application for re-instatement to elective office.
 77-704. No loss of seniority or insurance benefits provided by state.
 77-705. Re-instatement for balance of term of elective office.
 77-706. Proceedings in district court—duty of county attorney or attorney general.
 77-707. Appointment of “acting” officers.
 77-708. Absence created by military service creates no vacancy in office.

77-701. Employees of state or its subdivisions inducted into military service to be re-instated in employment. Any person inducted into the land or naval forces of the United States (including the aviation unit of either force) or any member of any reserve component of the land or naval forces, national guard, or retired personnel ordered into the active military service of the United States, who, in order to perform such training, service or active duty, leaves a position, other than a temporary position, in the employ of the state of Montana or any political subdivision thereof, and who

(1) Receives a certificate of completion of training or service from the proper authorities of the United States government, and

(2) Is still qualified to perform the duties of such position:

(a) If such position was in the employ of the state of Montana or any political subdivision thereof, excluding elective positions, such persons shall be restored to such position or to a position of like seniority, status and pay; provided, however, that such position or department has not been abolished or consolidated.

(b) If such position was that of an elected, executive or judicial officer of the state of Montana or any political subdivision thereof, such person shall be restored to such position, status and pay at any time during the term for which he was elected as provided herein.

History: En. Sec. 1, Ch. 47, L. 1941.

“Acting Officers”

Held, that the legislative intent was not to establish a new class of officers under the title of “acting officers” but merely to provide for the naming of officers to replace the elected officers for a period not to exceed the unexpired term of those replaced. *Gullickson v. Mitchell*, 113 M 359, 126 P 2d 1106.

Constitutionality

In an original proceeding for a judicial determination under the declaratory judgment act, of plaintiff's status as “acting” attorney general of the state of Montana, appointed under this chapter, held, that although the act may not lawfully apply

to certain officers such as judicial officers absenting themselves from the state of Montana more than sixty consecutive days owing to the provisions of art. VIII, sec. 37, const., that does not leave it objectionable as class legislation; held further, that the act does not offend against all other constitutional provisions cited. *Gullickson v. Mitchell*, 113 M 359, 126 P 2d 1106.

Does Not Apply to Legislative Officers

This act, not mentioning legislative officers, held, that the chapter does not apply to such officers, and therefore does not warrant the appointment of an acting senator to serve during the absence of the elected one while serving in the country's armed forces. *State ex rel. Grant v. Eaton*, 144 M 199, 205, 133 P 2d 588.

Induction Into Military Service Results in Leave of Absence, Not Permanent Vacancy

Held, that where regularly elected incumbent of office of attorney general was ordered to report for active military service as major in judge advocate general's department before expiration of his term of office, that his temporary relinquishment of the office under this chapter did not result in a permanent vacancy of the office, but in a leave of absence or suspension from duty, and his successor, under his temporary and indefinite appointment, became the attorney general for all purposes, vested with all the powers of the office, whether imposed by constitution or statute. *Gullickson v. Mitchell*, 113 M 359, 365, 126 P 2d 1106.

Vacancy Not Created by Entry into Military Service

Held, under the decision in *Gullickson v. Mitchell*, 113 M 359, 126 P 2d 1106, that entry in the military service did not create a vacancy in the office of attorney general within the meaning of art. VII, sec. 7 of the state constitution, and defendant appointee of the governor held entitled to continue in the office until the general election on Nov. 7, 1944, and that the 124 write-in votes cast for relator at the general election held on Nov. 3, 1942 under the facts presented did not result in his election. *State ex rel. Niewoehner v. Bottomly*, 116 M 96, 97, 148 P 2d 545.

77-702. Application for re-employment. All persons asking restoration to a position in accordance with the provisions of paragraph (a) of section 77-701 shall, in order to qualify for the restoration of such position, make application for re-employment within forty (40) days after he is relieved from such training and service. Such application must be in writing and presented to the officer, district, board or employing unit of the state or political subdivision thereof by which such applicant was formerly employed.

History: En. Sec. 2, Ch. 47, L. 1941.

77-703. Application for re-instatement to elective office. All persons seeking restoration to an elective office in accordance with the provisions of paragraph (b) of section 77-701 shall, in order to qualify under the provisions of this act, make application for reinstatement to such office within forty (40) days after he is relieved from such training and service. Such applications must be in writing and presented to the governor in the case of state elective offices, and to the board of county commissioners in the case of county, township, or district offices.

History: En. Sec. 3, Ch. 47, L. 1941.

77-704. No loss of seniority or insurance benefits provided by state. Any person who is restored to a position in accordance with the provisions of paragraph (a) of section 77-701 shall be considered as having been on furlough or leave of absence during his period of training and service in the land or naval forces, shall be so restored without loss of seniority (if seniority rules are applicable in such particular position), shall be entitled to participate in any insurance or other benefits offered by the state of Montana or the political subdivision thereof pursuant to established rules and practices relating to employees on furlough or on leave of absence in effect at the time such person is ordered into such service, and, except as otherwise provided herein, shall not be discharged from such position without cause within one (1) year after such restoration.

History: En. Sec. 4, Ch. 47, L. 1941.

77-705. Re-instatement for balance of term of elective office. Any person who is restored to a position in accordance with the provisions of paragraph (b) of section 77-701 shall be considered as having been on leave of

absence during his period of active military service and shall be immediately so restored to his official position as such officer for the balance of the term for which he was elected.

History: En. Sec. 5, Ch. 47, L. 1941.

77-706. Proceedings in district court—duty of county attorney or attorney general. In case of any failure or refusal by any officer, board, department, or employing unit of the state or any political subdivision thereof to comply with the provisions of sections 77-701, 77-704 or 77-705, the district court of the state of Montana for the county in which such person seeking restoration of position resides shall have the power upon the filing of a motion, petition, or other appropriate pleading by the person entitled to the benefits of these provisions, to specifically require such officer, department, board, or employing unit to comply with such provision for any loss of wages or benefits suffered by reason of such an unlawful action. The court shall order a speedy hearing in any such cases and shall advance it on the calendar. Upon application to the county attorney of the county in which the applicant resides in the case of county, township, and district offices and positions and to the attorney general of the state of Montana in the case of state offices and positions, by any person claiming to be entitled to the benefits of such provisions, such county attorney or attorney general, if reasonably satisfied that the person so applying is entitled to such benefits, shall appear and act as attorney for such person in the amicable adjustment of the claim or in the filing of any motion, petition, or other appropriate pleading and prosecution thereof to specifically require a compliance with such provisions; provided, that no fees or court costs shall be taxed against the person so applying for such benefits.

History: En. Sec. 6, Ch. 47, L. 1941.

77-707. Appointment of “acting” officers. The governor, in the case of district judges and officers elected from the state at large, and the board of county commissioners, in the case of members of either house of the legislative assembly and county, township or district officers elected from such county, shall appoint as “acting” officer to temporarily replace any elected officer, designated in paragraph (b) of section 77-701, who shall enter military service in the manner set forth in section 77-701. “Acting” officers so appointed shall be appointed for a period not to exceed the unexpired term of the officer whose duties he assumes and such appointment shall be subject to the right hereinbefore set forth of the elected officer to the restoration of his position.

History: En. Sec. 7, Ch. 47, L. 1941.

77-708. Absence created by military service creates no vacancy in office. It is specifically provided that the provisions of section 59-305, subdivisions 5, 6 and 7 of section 59-602 and section 16-2417, shall not be, and the same are declared not to be, applicable insofar as they relate to absence or residence of any officer of the state or political subdivision thereof caused by the military service of such officer as set forth in section 77-701. It is specifically declared that the absence of such officer, caused by such military service, shall not create a vacancy in the office to which he was elected.

History: En. Sec. 8, Ch. 47, L. 1941.

CHAPTER 8

VETERANS' CERTIFICATES OF DISCHARGE—FREE FILING

Section 77-801. County clerks to record certificates of discharge.

77-801. (5654) County clerks to record certificates of discharge. It shall be the duty of the county clerk of any county of the state of Montana to record, without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged person, regardless of sex, who served with the United States forces in any of its wars.

History: En. Sec. 2, Ch. 211, L. 1921;
re-en. Sec. 5654, R. C. M. 1921; amd. Sec.
1, Ch. 54, L. 1943.

CHAPTER 9

VETERANS' FREE TUITION AT UNIVERSITY OF MONTANA

Section 77-901. Honorably discharged veterans—free tuition at university of Montana.

77-901. Honorably discharged veterans—free tuition at university of Montana. All honorably discharged persons who served with the United States forces in any of its wars and who were bona fide residents of the state of Montana at the time of their entry into said United States forces shall have free fees and tuition in any and all of the units of the university of Montana, including the law and medical departments, and for extra studies in any of the units of the university of Montana, provided, however, that the provisions of this act shall not apply to persons who qualify under the provisions of the "servicemen's readjustment act of 1944", being "public law 346 of the seventy-eighth congress, chapter 268, second session" and "public law 16 of the seventy-eighth congress, chapter 22, first session", and all acts supplementary and amendatory thereof.

History: En. Sec. 1, Ch. 194, L. 1943; Cross-Reference
amd. Sec. 1, Ch. 44, L. 1945. University of Montana, free tuition, sec.
75-506.

CHAPTER 10

VETERANS' WELFARE COMMISSION

Section 77-1001. Veterans' welfare commission created.
77-1002. Duty of commission.
77-1003. Veterans' welfare fund—expenditures.
77-1004. Surety bond.
77-1005. Seal—acknowledgments.
77-1006. Aid to be rendered by state, county and municipal officers.
77-1007. Acceptance of money for service forbidden.
77-1008. Records and property of previous commission transferred.
77-1009. Veterans' welfare commission authorized to accept federal funds.
77-1010. Contracts for reimbursing veterans' welfare commission authorized.
77-1011. Qualifications for on-the-job training—services relating to.

Tit. 77, c. 10
Veterans'
Compensation
Fund
L. '51, Ini. 54
p. 781

Tit. 79, c. 10
Office of State
Controller
created
L. '51, c. 194
Secs. 1-17
pp. 440-449

Tit. 79, c. 10
Supp.
appropriation
L. '51, c. 185
Sec. 8, p. 385

77-1001. Veterans' welfare commission created. There is hereby created a commission to be known as the veterans' welfare commission of the state of Montana, to consist of five members who shall be appointed by the governor. Not more than one member shall be appointed from any one county; provided that no change of residence within the state after appointment shall alter his status as a member. No person shall be eligible to serve on the

commission unless such person shall have been honorably discharged from service in the military forces of the United States in any of its wars and who is not a resident of this state. Such appointment shall be for a term of five years except that the governor in appointing the members of the first commission shall designate one member to serve for one year; one member to serve for two years; one member to serve for three years; one member to serve for four years and one member to serve for five years. The commission shall select, from its membership, a chairman, a vice-chairman and a secretary. Should a vacancy occur, the governor shall appoint a successor for the unexpired term only as hereinbefore provided. Each of the members of the veterans' welfare commission shall receive, as compensation for his official services, the sum of ten (\$10.00) dollars per diem for each day actually engaged in the duties of his office, together with necessary expenses while away from home in the performance of the duties of his office. The maximum amount each member of the commission shall receive for per diem shall not exceed the sum of three hundred (\$300.00) dollars per annum.

History: En. Sec. 1, Ch. 111, L. 1945.

Cross-References

Burial at expense of county, secs. 71-120 to 71-125.

Club houses exempt from taxation, sec. 84-202.

Guardianship of veterans, secs. 91-4801 to 91-4822.

Hunting and fishing licenses not required, sec. 26-219.

Soldiers' home, sec. 80-310.

Suspension of taxes on property owned by soldiers, sec. 84-41-103.

77-1002. Duty of commission. It shall be the duty of the commission and it shall have power to establish a state wide service for discharged veterans and their families; to actively cooperate with state and federal agencies having to do with the affairs of veterans and their families; and to promote the general welfare of all veterans and their families. In carrying out the purposes of this act the commission may employ a director, service officers, assistants, clerks, or other personnel, all of whom must be residents of the state of Montana, prescribe their duties and fix and pay their compensation; and establish a state headquarters and such other offices as may be necessary to carry out the purposes of this act. All male employees of the commission shall have served in the military forces of the United States during World War I or World War II and shall have been honorably discharged therefrom; whenever possible female employees shall also be persons honorably discharged from service during World War I or World War II; preference for all appointments shall be given to disabled veterans.

History: En. Sec. 2, Ch. 111, L. 1945.

77-1003. Veterans' welfare fund—expenditures. All monies appropriated by the legislature for the commission shall be kept by the state treasurer in a separate fund to be known as the veterans' welfare fund and be paid out by him on warrants issued by the state auditor on claims filed by the veterans' welfare commission. The state accountant shall prescribe a system of records and accounts to be kept by the commission. Expenditures shall be audited by the state board of examiners at least annually. The state board of examiners may create a contingent fund for the veterans' welfare commission as provided for in sections 79-602 and 82-1902.

History: En. Sec. 3, Ch. 111, L. 1945.

77-1004. Surety bond. The director, and such other employees as the commission shall direct, shall furnish a surety bond for the faithful discharge of his or their duties in amounts to be prescribed by the commission.

History: En. Sec. 4, Ch. 111, L. 1945.

77-1005. Seal—acknowledgments. The commission may provide for a seal. The members and employees of the commission shall be authorized to take acknowledgments, depositions, and administer oaths and affirmations in any matters connected with the affairs of the commission or with the official duties of the members or employees of the commission.

History: En. Sec. 5, Ch. 111, L. 1945.

77-1006. Aid to be rendered by state, county and municipal officers. It shall be the duty of all state, county and municipal officers to render such aid to the veterans' welfare commission as shall be within their power and consistent with the duties of their respective offices.

History: En. Sec. 6, Ch. 111, L. 1945.

77-1007. Acceptance of money for service forbidden. No member or employee of the commission shall accept, receive or charge any money or thing of value for the performance of any service rendered to any veteran or his or her dependents, at any time or in any manner, other than the compensation allowed by law, and any person who shall violate the provisions of this section shall be deemed guilty of a misdemeanor.

History: En. Sec. 7, Ch. 111, L. 1945.

77-1008. Records and property of previous commission transferred. All records and property, including unexpended appropriations, and any other monies, of the veterans' welfare commission as heretofore constituted, shall be, and are hereby, transferred to the commission hereby created.

History: En. Sec. 8, Ch. 111, L. 1945.

77-1009. Veterans' welfare commission authorized to accept federal funds. The veterans' welfare commission is hereby authorized to accept from the federal government, or any agencies thereof, any funds made available to carry out purposes within the scope of the activities and commission purposes of the veterans' welfare commission and to accept such funds as said veterans' welfare commission may direct.

History: En. Sec. 1, Ch. 256, L. 1947.

77-1010. Contracts for reimbursing veterans' welfare commission authorized. The governor of the state of Montana and the chairman and the secretary of the veterans' welfare commission be and they are hereby authorized to sign contracts with the federal government or any agency thereof for the reimbursement of the veterans' welfare commission for any work which the veterans' welfare commission may do for which any federal statute provides reimbursement to the states.

History: En. Sec. 2, Ch. 256, L. 1947.

77-1011. Qualifications for on-the-job training—services relating to. The veterans' welfare commission is hereby empowered to render the necessary services in ascertaining the qualifications of the industrial establishments for furnishing training on-the-job to veterans under the provisions

of Part VIII, Public Law No. 346 of the Seventy-Eighth Congress, as amended, and the supervision of the industrial establishments furnishing such training; provided, however, that all surveys and/or investigations of industrial establishments desiring to offer training in any of the apprenticeable trades shall be referred to the Montana state apprenticeship council implementing the provisions of sections 41-1201 to 41-1206.

History: En. Sec. 3, Ch. 256, L. 1947.

CHAPTER 11

REMOVAL OF DISABILITY OF MINORITY OF VETERANS AND SPOUSES FOR BENEFITS UNDER SERVICEMEN'S READJUSTMENT ACT

Section 77-1101: Disability of minority removed for veterans in certain cases.

77-1101. Disability of minority removed for veterans in certain cases.

The disability of minority of any person otherwise eligible for guaranty or insurance of a loan pursuant to the servicemen's readjustment act of 1944, as amended (P. L. 346, 79th Congress, as amended), and of the minor spouse of any eligible veteran irrespective of his or her age, in connection with any transaction entered into pursuant to said act as amended, is hereby removed, for all purposes in connection with such transaction including, but not limited to, incurring of indebtedness or obligations and acquiring, encumbering, selling, releasing, or conveying property, or any interest therein, and litigating or settling controversies arising therefrom, if all or part of any obligations incident to such transaction be guaranteed or insured by the administrator of veteran's affairs pursuant to such act; provided, nevertheless, that this act shall not be construed to impose any other or greater rights or liabilities than would exist if such person and such spouse were under no such disability.

History: En. Sec. 1, Ch. 13, L. 1947.

TITLE 78

STATE CAPITOL

- Chapter 1. Custodian of state capitol, 78-101 to 78-109.
2. Montana veterans and pioneers building—adjunct to state capitol building, 78-201 to 78-211.
 3. Veterans memorial building at state capitol, 78-301 to 78-308.
 4. Declaration of policy as to state works—employment of architect to plan capitol addition—bond issue, 78-401 to 78-416.
 5. Capitol building fund, 78-501 to 78-503.
 6. State laboratory building bonds, 78-601 to 78-609.

CHAPTER 1

CUSTODIAN OF STATE CAPITOL

- Section 78-101. Custodian of state capitol.
- 78-102. Duties of custodian of state capitol.
- 78-103. Employment or dismissal of help.
- 78-104. Same.
- 78-105. Term of office.
- 78-106. Official bond.
- 78-107. National flag to be displayed.
- 78-108. Duties of secretary of state.
- 78-109. Appropriation.

78-101. (310) Custodian of state capitol. The head janitor at the state capitol shall be custodian of all state property at the state capitol. Said head janitor and custodian shall be appointed by the governor and shall receive a salary of two thousand dollars per year.

History: En. Sec. 1, Ch. 46, L. 1917; States 53, 61.
re-en. Sec. 310, R. C. M. 1921. 59 C.J. States §§ 186, 249.

78-102. (311) Duties of custodian of state capitol. It shall be the duty of the custodian of the state capitol to supervise and direct the work of caring for and maintaining the state capitol, its buildings, equipment, and grounds, under the direction of the state board of examiners.

History: En. Sec. 2, Ch. 46, L. 1917; States 74.
re-en. Sec. 311, R. C. M. 1921. 59 C.J. States § 123.

78-103. (312) Employment or dismissal of help. It shall be the duty of the custodian of the state capitol to nominate and recommend for employment or dismissal, and he shall have charge of and supervision over, all engineers, firemen, assistants, janitors, watchmen, guards, and all other laborers and employees that may be necessary in maintaining, cleaning, and caring for the state capitol, its buildings, equipment, and grounds.

History: En. Sec. 3, Ch. 46, L. 1917;
re-en. Sec. 312, R. C. M. 1921.

78-104. (313) Same. It shall be the duty of the custodian of the state capitol to have charge of, and keep clean and in good repair, all buildings, furniture, fixtures, equipment and all other property, of whatever kind and character, belonging to the state of Montana at the state capitol, and to

recommend to the proper board such repairs, replacements, renewals, or additions to the said buildings, equipment, and other property as may seem necessary or desirable, and he shall permit the occupancy and use of such buildings, equipment, and other property, only as prescribed by law or as directed, upon requisition issued by the state board of examiners; to make on the thirty-first day of December of each year a report to the governor of the affairs of the custodian's office, which report, among other items, shall contain a full, complete, and true account of all persons employed by him or under his direction, the purposes for which employed, length of time served, and the compensation paid to each of such employees, a full, complete, and true statement of all fuel, water, and electric current consumed in heating, watering, and lighting the capitol buildings and grounds, and the amount paid for each of such items; to make and keep a true, correct, complete, and continuing inventory of all property, equipment, or supplies belonging to the state at the state capitol, checking the same in or out, as the case may be, when receiving or surrendering such property, equipment, or supplies, and he shall be held liable for its safe keeping and return; and to do all such other acts and things, that to him may seem necessary or desirable, to properly conserve and protect the best interests of the state in carrying into effect the provisions of this act.

History: En. Sec. 4, Ch. 46, L. 1917;
re-en. Sec. 313, R. C. M. 1921.

78-105. (314) Term of office. The custodian of the state capitol shall be appointed for a term of four years, unless such appointment be sooner revoked by the governor.

History: En. Sec. 5, Ch. 46, L. 1917; States~~53~~.
re-en. Sec. 314, R. C. M. 1921. 59 C.J. States §§ 2, 205.

78-106. (315) Official bond. The custodian of the state capitol must execute an official bond in the sum of five thousand dollars, conditioned on the faithful performance of his duties and trust.

History: En. Sec. 6, Ch. 46, L. 1917; States~~53~~.
re-en. Sec. 315, R. C. M. 1921. See Sec. 59 C.J. States § 202.
6-102.

78-107. (317) National flag to be displayed. The national flag shall be kept unfurled, displayed, and floating from a suitable flagstaff to be erected upon the state capitol grounds from eight o'clock a. m. to five o'clock p. m. of each and every day of the year; provided, that the flag shall not be so unfurled or displayed or allowed to remain floating when by reason of violent wind or other inclemency of the weather there is danger of destruction of or material injury to such flag.

History: En. Sec. 1, Ch. 157, L. 1907; United States~~51½~~.
Sec. 265, Rev. C. 1907; re-en. Sec. 317, 36 C.J.S. Flags § 2.
R. C. M. 1921.

78-108. (318) Duties of secretary of state. For the purposes of carrying out the provisions of this act the secretary of state is hereby authorized and directed to have erected on the state capitol grounds a suitable flagstaff of proper dimensions, and to provide the necessary flag or flags of proper dimensions and suitable material, and to cause the said flag to be unfurled, displayed, and kept floating as above provided.

History: En. Sec. 2, Ch. 157, L. 1907; United States 51½.
 Sec. 266, Rev. C. 1907; re-en. Sec. 318, 36 C.J.S. Flags § 2; 59 C.J. States §§ 118
 R. C. M. 1921. et seq., 123 et seq.

78-109. (319) Appropriation. The necessary expenses incident to the carrying out of this act shall be paid out of such moneys as shall be appropriated for the maintenance of the capitol building and grounds, and that the sum of fifteen hundred dollars, or so much thereof as may be necessary, is hereby appropriated out of any moneys in the state treasury not otherwise appropriated, to pay for the same and to carry this bill into effect.

History: En. Sec. 3, Ch. 157, L. 1907;
 Sec. 267, Rev. C. 1907; re-en. Sec. 319,
 R. C. M. 1921.

CHAPTER 2

MONTANA VETERANS AND PIONEERS BUILDING—ADJUNCT TO STATE CAPITOL BUILDING

Tit. 78, C. 2
 (SL '45 C. 204)
 Ref. to
 SL '49, C. 205
 Sec. 2; P. 505

- Section 78-201. Construction of "Montana veterans and pioneers building" authorized—site.
- 78-202. Purpose and use of building.
- 78-203. Duties of board of examiners and veterans memorial fund commission.
- 78-204. Bids and contract—architect and contractors to furnish bonds.
- 78-205. State memorial capitol bonds, issue and sale—terms and conditions.
- 78-206. Minimum sale price—registration.
- 78-207. Payment of bonds and interest from what funds.
- 78-208. Veterans and pioneers memorial capitol building and interest fund created.
- 78-209. State may receive gifts for building.
- 78-210. Waiver of budget act.
- 78-211. Consultation with veterans' commission, historical society and other organizations.

78-201. Construction of "Montana veterans and pioneers building" authorized—site. The state board of examiners of Montana is hereby authorized and directed to cause to be constructed and furnished a building as an adjunct of the state capitol building to be known as the "Montana veterans and pioneers memorial building". Said building shall be erected upon a site on the present state capitol building grounds or upon lands owned or hereafter acquired by the state as part of said site.

History: En. Sec. 1, Ch. 204, L. 1945.

78-202. Purpose and use of building. Said building shall constitute a perpetual memorial to the war veterans and the pioneers of Montana, and when completed, said building shall be devoted to the use of the war veterans organizations set forth in sections 78-301 to 78-305, the historical society of Montana, the society of Montana pioneers, and the sons and daughters of Montana pioneers, and for the housing of books, records, documents, and other property of such veterans and organizations; and there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations, and for the librarian and other employees of the historical society of Montana.

History: En. Sec. 2, Ch. 204, L. 1945.

78-203. Duties of board of examiners and veterans memorial fund commission. Upon the sale of the bonds, or other acquisition of funds as

authorized by this act, the state board of examiners is hereby empowered and directed to proceed with the erection of a building of suitable construction and design for the purposes herein specified. The veterans memorial fund commission shall make studies concerning plans and specifications for said building, and landscaping the grounds, and similar features, and shall submit them, when completed, to the board of examiners who shall thereupon employ architects, engineers and other personnel as may be necessary to prepare plans and specifications therefor, and such architects and engineers and other personnel so employed shall be paid therefor from the funds herein provided for. Such plans and specifications shall upon their completion be submitted to said commission for its approval.

History: En. Sec. 3, Ch. 204, L. 1945.

78-204. Bids and contract—architect and contractors to furnish bonds.

The state board of examiners shall advertise for bids for the construction of said building in the manner provided by law and shall let the contract for said building. Said board shall require both the contractor and architect to give bonds to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of their respective duties and contract. The total cost of erecting and furnishing said building shall not exceed the sum of four hundred thousand (\$400,000.00) dollars.

History: En. Sec. 4, Ch. 204, L. 1945.

78-205. State memorial capitol bonds, issue and sale—terms and conditions. For the purpose of providing funds for the erection and furnishing of the memorial building authorized by this act, the state board of examiners is hereby authorized and empowered to issue and sell veterans and pioneers memorial capitol building bonds of the state of Montana in an amount not exceeding four hundred thousand (\$400,000.00) dollars. Said bonds shall bear interest at a rate not exceeding four (4%) per cent per annum, payable semi-annually. The bonds shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe and shall be payable over such period of years, not exceeding ten (10), as said board may specify. All bonds shall be optional and redeemable three (3) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denomination and form and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, the secretary of state and members of said board and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signatures of members of said board.

History: En. Sec. 5, Ch. 204, L. 1945.

78-206. Minimum sale price—registration. Said bonds shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 204, L. 1945.

78-207. Payment of bonds and interest from what funds. The principal and interest of the bonds authorized by this act shall be payable out of the following funds and from them only. First, all moneys now in the veterans memorial fund, created by section 82-308 from the proceeds of boxing and sparring matches are hereby dedicated and appropriated to the payment of the principal and interest of said bonds, provided, however, that nothing herein contained shall be deemed to prevent the payment by the state athletic commission and the state treasurer out of said funds, of the expenses of the state athletic commission and the salary of its secretary, as provided in section 82-308, and further provided that a portion of said bonds, equal in amount to the total cost of furnishing said memorial building, shall be paid and retired exclusively out of the moneys received from the veterans memorial fund hereby appropriated for the payment of said bonds. Second, all the income received from the capitol building land grant shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act. Any and all balances or sums now in said capitol building land grant fund or that may accrue to and become a part of said fund prior to the time of the sale of the bonds provided for by this act shall likewise be and the same are hereby pledged and appropriated for the payment of principal and interest of the bonds authorized by this act and to cover and pay the cost of construction of said building to the extent that said balances or accruals to said fund may be sufficient to pay the same; provided further that said bonds shall be issued and sold by said board of examiners as herein provided, only for the total sum or amount necessary to be raised in excess of such total of all balances or sums now in or that may accrue to said capitol building land grant and said veterans' memorial funds in order to make available for such construction and furnishing the total amount of four hundred thousand (\$400,000.00) dollars as provided in this act.

History: En. Sec. 7, Ch. 204, L. 1945.

78-208. Veterans and pioneers memorial capitol building and interest fund created. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the veterans and pioneer memorial capitol building interest and sinking fund, into which shall be paid all sums of money from the funds hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds, and the construction and furnishing of said building.

History: En. Sec. 8, Ch. 204, L. 1945.

78-209. State may receive gifts for building. The state of Montana is hereby authorized to receive gifts, legacies and donations of money or other property for the erection or maintenance of the memorial building herein provided for and all such gifts, legacies and donations are hereby dedicated to such purpose.

History: En. Sec. 9, Ch. 204, L. 1945.

78-210. Waiver of budget act. The appropriation herein provided for shall be deemed and held valid, notwithstanding the provisions of the budget act.

History: En. Sec. 10, Ch. 204, L. 1945.

78-211. Consultation with veterans' commission, historical society and other organizations. The state board of examiners shall consult and advise with the veterans' memorial fund commission, the historical society of Montana, the society of Montana pioneers and the sons and daughters of Montana pioneers, to the end that the building so constructed shall be in keeping with the purposes of this act, to construct a perpetual memorial to the war veterans and pioneers of Montana.

History: Ea. Sec. 11, Ch. 204, L. 1945.

CHAPTER 3

VETERANS MEMORIAL BUILDING AT STATE CAPITOL

- Section 78-301. Veterans' memorial fund commission created.
 78-302. Commission to control veterans' memorial fund.
 78-303. Veterans' memorial building—construction.
 78-304. Commission may adopt rules.
 78-305. Warrants—how drawn.
 78-306. Transfers to veterans' memorial fund.
 78-307. Interest to be credited to veterans' memorial fund.
 78-308. Investment of fund.

78-301. Veterans' memorial fund commission created. There is hereby created a veterans' memorial fund commission consisting of five (5) persons to be appointed by the governor. One (1) shall be appointed from a list of five (5) names submitted by the United Spanish War Veterans, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the Veterans of Foreign Wars, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the American Legion, of Montana. One (1) shall be appointed from a list of five (5) names submitted by the Disabled American Veterans, of Montana. The fifth shall be appointed from a list of four (4) names submitted by the other four (4) members of the commission. One (1) of said persons shall be appointed for a period of one (1) year from and after the first day of May, 1939, and one (1) for a period of two (2) years from and after the first day of May, 1939, and one (1) for a period of three (3) years from and after the first day of May, 1939, and one (1) for a period of four (4) years from and after the first day of May, 1939, and the fifth member appointed from the list of names submitted by the other four (4) commissioners shall serve for one (1) year from and after the first day of May, 1939. The successors to the commissioners appointed from lists submitted by the United Spanish War Veterans, of Montana, Veterans of Foreign Wars, of Montana, American Legion, of Montana, and Disabled American Veterans, of Montana, shall be appointed for terms of four (4) years and shall be appointed from a list of five (5) names submitted by the organization represented by the appointee whose term is to expire. The successor to the fifth member appointed from a list of four (4) names submitted by the other four (4) commissioners shall be appointed annually from a list of four (4) names submitted by the other four (4) commissioners. The members of the commission shall at their first meeting after their appointment and on or before the first day of June of each year thereafter elect one (1) of their number chairman of the commission, shall adopt a seal for the commission, and make such rules for the administration of their office not inconsistent with this act as they may deem expedient, and they

may thereafter amend or abrogate such rules. Three (3) of the members of the commission shall constitute a quorum to do business, and the concurrence of at least three (3) members of the commission shall be necessary to render a choice or decision by the commission. Each member of said commission shall receive as compensation for services the sum of eight (\$8.00) dollars per diem and actual travel expenses while engaged in work authorized by the commission. The veterans' memorial fund commission shall hereinafter be referred to as the commission.

History: En. Sec. 1, Ch. 131, L. 1939.

78-302. Commission to control veterans' memorial fund. The veterans' memorial fund heretofore created shall be placed under the exclusive control and jurisdiction of said commission which is empowered to expend said fund and the accruals thereto for the construction and maintenance of a veterans' memorial building, and the necessary expenses of the commission.

History: En. Sec. 2, Ch. 131, L. 1939.

78-303. Veterans' memorial building—construction. It shall be the duty of the commission to have constructed as soon as said commission deems feasible, a veterans' memorial building on state owned land adjacent to the state capitol at Helena, Montana, and plainly identify said building as the "veterans' memorial building". The commission is by this act empowered to enter into agreements, contracts, or arrangements for the purpose of securing aid from an agency or agencies of the United States, and secure plans and estimates, and let contracts for the construction of the veterans' memorial building. The commission is empowered to receive and accept gifts, devises and bequests which will in no manner affect the identity of the veterans' memorial building.

History: En. Sec. 3, Ch. 131, L. 1939.

78-304. Commission may adopt rules. Said commission may in writing adopt rules and regulations not inconsistent with this act for the care and management of the veterans' memorial building.

History: En. Sec. 4, Ch. 131, L. 1939.

78-305. Warrants—how drawn. Warrants shall be drawn on the veterans' memorial fund in payment of claims approved by the veterans' memorial fund commission.

History: En. Sec. 5, Ch. 131, L. 1939.

78-306. (4562.1) Transfers to veterans' memorial fund. All monies which have heretofore been collected and received by the state treasurer and by him credited to the "soldiers' and sailors' home fund," amounting at this time to the sum of eleven thousand ninety-eight dollars and six cents (\$11,098.06), are hereby ordered and directed to be transferred by the state treasurer to the "veterans' memorial fund," and there kept and held for the erection and maintenance of a veterans' memorial building, and for other expenditures authorized by this act. All additional funds which may come into the possession of the state treasurer under the terms of the existing law shall be credited to and held in the "veterans' memorial fund." The state is hereby authorized and empowered to accept and receive gifts, bequests and devises for the proposed veterans' memorial building, and the monies

so received shall be held and expended only for the construction of such memorial and for its support and maintenance.

History: En. Sec. 12, Ch. 103, L. 1927. States 127.
59 C.J. States § 378.

78-307. (4562.2) Interest to be credited to veterans' memorial fund. That from and after the first day of March, 1929, the interest on daily balances of all moneys which are deposited by the state treasurer as required by law belonging to the veterans' memorial fund shall be credited to and belong exclusively to such fund.

History: En. Sec. 1, Ch. 60, L. 1929. States 124.
59 C.J. States § 374 et seq.

78-308. (4562.3) Investment of fund. The state board of land commissioners is hereby authorized and empowered to securely invest the money now in the state treasury or which may hereafter accumulate therein to the credit of the veterans' memorial fund, in bonds of the United States, state bonds, county bonds, or school district bonds, the principal and interest of which investments shall be treated and considered as belonging exclusively to the veterans' memorial fund, to be used for the purposes in contemplation provided for by sections 82-301 through 82-311 and section 78-306.

History: En. Sec. 2, Ch. 60, L. 1929.

CHAPTER 4

DECLARATION OF POLICY AS TO STATE WORKS—EMPLOYMENT OF ARCHITECT TO PLAN CAPITOL ADDITION—BOND ISSUE

- Section 78-401. Declaration of policy as to state public works.
78-402. Employment of architect to plan office building at capitol authorized.
78-403. Appropriation.
78-404. Act effective despite budget act.
78-405. Employment of architect or engineer authorized.
78-406. Appropriation.
78-407. State office building bonds authorized.
78-408. Erection of building—plans and specifications.
78-409. Bids and contract.
78-410. Amount of bonds.
78-411. Interest rate—term—denominations—execution.
78-412. Sale of bonds.
78-413. Payment of principal and interest—limitation on amount of issue.
78-414. Capitol office building interest and sinking fund.
78-415. Budget act not applicable.
78-416. Separability clause.

78-401. Declaration of policy as to state public works. The United States of America is now engaged in the greatest war of all time in which effort it has been loyally supported by the state of Montana (in common with our sister states) and the state of Montana and its citizens have cheerfully, promptly and generously contributed to the nation's war effort by giving their sons and daughters and by furnishing money and materials to efficiently prosecute the war, whenever called upon by the United States, and the caring for, rehabilitation and employment of returning soldiers, sailors, marines and other service men and women as well as citizens of Montana who are engaged in various war industries to produce the things necessary for the prosecution of the war, is as essential as fighting the battles of the war.

The cessation of hostilities will intensify the need for providing employment for those who come home from the war, which employment should include, in part, a program of construction of needed public buildings and improvements, and is an essential part of the war effort.

History: En. Sec. 1, Ch. 2, L. 1945.

78-402. Employment of architect to plan office building at capitol authorized. The state of Montana hereby recognizes and declares its post-war obligation for the care, rehabilitation and employment of its citizens of the classes enumerated in section 78-401. In order that a beginning may be made in translating that obligation into performance, the state board of examiners is hereby authorized and directed to employ an architect or architects for such period of time as it may deem proper, not exceeding two years from the effective date of this act, for the purpose of preparing plans and specifications for the construction of a needed office building or addition to the present state capitol building at Helena. Said architect or architects shall receive as compensation for said services, such amounts, not exceeding the sum appropriated by this act, as said board of examiners shall determine to be reasonable and proper.

History: En. Sec. 2, Ch. 2, L. 1945.

78-403. Appropriation. There is hereby appropriated out of the unexpended surplus moneys at present in the general fund of the state of Montana, the sum of thirty thousand dollars (\$30,000.00) or such part thereof as may be necessary to pay said architect or architects in compliance with the provisions of this act. It is, however, expressly declared, and this provision is mandatory, that said sum of thirty thousand dollars (\$30,000.00) or such part thereof as is necessary shall be paid only out of the present surplus in the general fund of the state, and no part of said money which may be taken from the surplus in said general fund shall be replaced by any money derived from any tax levy which may hereafter be made by the legislative assembly.

No part of the funds derived from any tax levy provided for by section 12 of article XII of the constitution of Montana, which has been or may hereafter be levied by this session of the legislative assembly shall be used to pay said appropriation or any part thereof.

History: En. Sec. 3, Ch. 2, L. 1945.

art. XIII, sec. 2 of the state constitution.
Graham v. State Board of Examiners, 116
M 584, 586, 155 P 2d 956.

Constitutionality

Held valid under art. XII, sec. 12 and

78-404. Act effective despite budget act. This act shall be fully effective notwithstanding any conflict between its provisions and those of the state budget act, or any failure of this act to comply with the requirements of said budget act.

History: En. Sec. 4, Ch. 2, L. 1945.

78-405. Employment of architect or engineer authorized. That the state board of examiners be and the same is hereby authorized, directed and empowered to employ an architect or architects, engineer or engineers, for such period of time as it may deem proper, not exceeding two (2) years from the effective date of this act, for the purpose of continuing the preparation of plans and specifications for the construction of an office building or of an

addition to the present state capitol building at Helena, or both such office building and addition. Said architect or architects, or engineer or engineers, shall receive as compensation for such services such amount not exceeding six and one-half per centum ($6\frac{1}{2}\%$) of total cost of said building or buildings, as said board of examiners shall determine to be reasonable and proper.

History: En. Sec. 1, Ch. 68, L. 1947.

78-406. Appropriation. There is hereby appropriated out of the unexpended surplus monies in the post war planning and reserve fund, the sum of thirty thousand (\$30,000.00) dollars or such part thereof that may be necessary to pay said architect or architects, engineer or engineers, in compliance with the provisions of this act.

History: En. Sec. 2, Ch. 68, L. 1947.

78-407. State office building bonds authorized. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of erecting and furnishing a separate office building as an adjunct to the state capitol building at Helena, Montana, said building to be erected upon a site upon the present capitol building grounds or upon lands owned or hereafter acquired by the state as a part of said site. The bonds hereby authorized to be issued and sold are authorized to supplement funds made available for such purpose under house bill number three of the thirtieth legislative assembly, 1947, and for the purpose of purchasing lands near the present capitol building, for employing architects and engineers and for remodeling and making alterations in offices of the present capitol building.

History: En. Sec. 1, Ch. 59, L. 1947.

NOTE.—House Bill No. 3 is a bill appropriating money from the post war planning and construction reserve fund

for certain public construction and improvement. See page 685, Session Laws of 1947.

78-408. Erection of building—plans and specifications. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to proceed with the erection of a building of suitable construction and design for use as an office building, in accordance with the plans and specifications heretofore partially prepared in accordance with sections 78-401 to 78-404.

History: En. Sec. 2, Ch. 59, L. 1947.

78-409. Bids and contract. The state board of examiners shall call for bids for the construction of said building and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 59, L. 1947.

78-410. Amount of bonds. The aggregate amount of bonds authorized by this act to supplement funds made available for the purpose herein expressed under house bill number three of the thirtieth legislative assembly, 1947, shall not exceed the sum of four hundred and fifty thousand dollars (\$450,000.00).

History: En. Sec. 4, Ch. 59, L. 1947.

NOTE.—See note to sec. 78-407.

78-411. Interest rate—term—denominations—execution. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at a rate not exceeding four percent (4%) per annum, payable semi-annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable three (3) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 59, L. 1947.

78-412. Sale of bonds. Said bonds shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 59, L. 1947.

78-413. Payment of principal and interest—limitation on amount of issue. The principal and interest of the bonds authorized by this act shall be payable out of the following fund and from it only: All the income received from the capitol building land grant, subject only to the prior dedication and appropriation of monies therefrom for the payment of principal and interest of bonds that are or may be issued pursuant to sections 78-201 to 78-211, shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act. Any and all balances or sums now in said capitol building land grant fund or that may accrue to and become a part of said fund prior to the time of the sale of the bonds provided for herein, in excess of the amount heretofore dedicated and appropriated by said sections 78-201 to 78-211, shall likewise be and the same are hereby pledged and appropriated for the payment of principal and interest of the bonds authorized by this act and to cover and pay the cost of erecting and furnishing of said building to the extent said balances or accruals to said fund may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums now in or that may be accrued to said capitol building land grant in order to make available for such erection and furnishing of said building a total of four hundred and fifty thousand dollars (\$450,000.00).

History: En. Sec. 7, Ch. 59, L. 1947.

78-414. Capitol office building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by

this act, there is hereby created a special fund to be known as the capitol office building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection and furnishing of said building.

History: En. Sec. 8, Ch. 59, L. 1947.

78-415. Budget act not applicable. The appropriation herein provided for shall be deemed and held valid notwithstanding the provisions of the budget act.

History: En. Sec. 9, Ch. 59, L. 1947.

78-416. Separability clause. Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof.

History: En. Sec. 10, Ch. 59, L. 1947.

CHAPTER 5

CAPITOL BUILDING FUND

- Section 78-501. Capitol building fund established.
78-502. Transfer of certain balances to fund required.
78-503. Dedication of fund.

78-501. Capitol building fund established. The state treasurer is hereby authorized and instructed to set aside in a fund, to be known as the "capitol building fund", all revenue received from the capitol building land grant, from and after the time that sufficient funds have been accumulated to meet the principal and interest on the refunding of the capitol building bonds as authorized in Chapter 133, Session Laws of 1939.

History: En. Sec. 1, Ch. 120, L. 1943.

78-502. Transfer of certain balances to fund required. The state treasurer is hereby instructed to transfer any balance or balances to be received, for the credit of the capitol building interest and sinking fund, over and above the amount necessary to pay all interest and principal on the said capitol building bonds as authorized in Chapter 133, Session Laws of 1939, to the capitol building fund.

History: En. Sec. 2, Ch. 120, L. 1943.

78-503. Dedication of fund. The funds so accumulated in said capitol building fund shall be held and dedicated for the purpose of constructing capitol buildings or additions, thereto, in accordance with the provisions of section 12 of the enabling act.

History: En. Sec. 3, Ch. 120, L. 1943.

CHAPTER 6

STATE LABORATORY BUILDING BONDS

- Section 78-601. Bonds for state laboratory building authorized.
78-602. Employment of architect and erection of building.
78-603. Call for bids—contractor's bond.

- 78-604. Limit on amount of bonds.
- 78-605. Interest rate, term and other provisions of bonds.
- 78-606. Sale of bonds—registration.
- 78-607. Payment of principal and interest—limit on amount of bonds.
- 78-608. State laboratory building interest and sinking fund.
- 78-609. Separability clause.

78-601. Bonds for state laboratory building authorized. The state board of examiners of the state of Montana is hereby authorized to issue and sell bonds for the purpose of erecting and furnishing a state laboratory building as an adjunct to the state capitol building at Helena, Montana, said building to be erected upon a site upon the present capitol building grounds or upon lands owned or hereafter acquired by the state as a part of said site.

History: En. Sec. 1, Ch. 258, L. 1947.

78-602. Employment of architect and erection of building. Upon the sale of the bonds, the state board of examiners is hereby empowered and directed to employ an architect to complete plans; and to proceed with the erection of a building of suitable construction and design for use as a laboratory building, in accordance with the plans and specifications heretofore prepared by the state laboratories commission in accordance with sections 82-1601 to 82-1606.

History: En. Sec. 2, Ch. 258, L. 1947.

78-603. Call for bids—contractor's bond. The state board of examiners shall call for bids for the construction of said building and let contracts for the same, all in accordance with the laws of the state of Montana. Said board shall require the contractor to give bond to the state of Montana in such amount as the board may determine, conditioned for the faithful performance of his duties and contracts.

History: En. Sec. 3, Ch. 258, L. 1947.

78-604. Limit on amount of bonds. The aggregate amount of bonds authorized by this act for the purpose herein expressed shall not exceed the sum of six hundred thousand dollars (\$600,000.00).

History: En. Sec. 4, Ch. 258, L. 1947.

78-605. Interest rate, term and other provisions of bonds. Bonds issued and sold by the state board of examiners under authority of this act shall bear interest at a rate not exceeding four per cent (4%) per annum, payable semi-annually. They shall be either amortization or serial bonds, shall bear such date as the state board of examiners shall prescribe, and shall be payable over such period of years, not exceeding twenty (20), as said board may specify. All bonds shall be optional and redeemable three (3) years after the date of issue and on any interest payment date thereafter, at the option of the state board of examiners. Said bonds shall be in such denominations and sums and shall contain such recitals as the state board of examiners may determine, shall be signed by the governor, the attorney general, and the secretary of state as members of said board, and shall be paid at the office of the state treasurer of the state of Montana. The coupons attached to said bonds may bear the facsimile signature of the members of said board.

History: En. Sec. 5, Ch. 258, L. 1947.

78-606. Sale of bonds—registration. Said bonds shall be sold by the state board of examiners at such time and in such manner as the board shall deem best to carry out the provisions of this act; provided that none of such bonds shall be sold for less than par, plus accrued interest to the date of delivery of the bonds. Each of said bonds shall be registered before delivery with the state treasurer of the state of Montana, who shall keep accurate accounts of payments of interest and principal upon said bonds.

History: En. Sec. 6, Ch. 258, L. 1947.

78-607. Payment of principal and interest—limit on amount of bonds. The principal and interest of the bonds authorized by this act shall be payable out of the following fund and from it only: All the income received from the capitol building land grant, subject only to the prior dedication and appropriation of monies therefrom for the payment of principal and interest of bonds that are or may be issued pursuant to sections 78-201 to 78-211, or that may be issued pursuant to sections 78-407 to 78-416, shall be and the same is hereby perpetually dedicated and appropriated for the payment of the principal and interest of the bonds provided for by this act. Any and all balances or sums now in said capitol building land grant fund or that may accrue to and become a part of said fund prior to the time of the sale of the bonds provided for herein, in excess of the amount heretofore dedicated and appropriated by said sections 78-201 to 78-211, or that may be dedicated and appropriated by sections 78-407 to 78-416, shall likewise be and the same are hereby pledged and appropriated for the payment of principal and interest of the bonds authorized by this act and to cover and pay the cost of erecting and furnishing of said building to the extent said balances or accruals to said fund may be sufficient to pay the same; provided said bonds shall be issued and sold by said board of examiners as herein provided only for the total sum or amount necessary to be raised in excess of such total of all balances or sums now in or that may be accrued to said capitol building land grant in order to make available for such erection and furnishing of said building a total of six hundred thousand dollars (\$600,000.00).

History: En. Sec. 7, Ch. 258, L. 1947.

78-608. State laboratory building interest and sinking fund. To provide for the payment of the interest and principal of the bonds authorized by this act, there is hereby created a special fund to be known as the state laboratory building interest and sinking fund, into which fund shall be paid all the sums of money hereinbefore dedicated and appropriated to the payment of the principal and interest of said bonds and the erection and furnishing of said building.

History: En. Sec. 8, Ch. 258, L. 1947.

78-609. Separability clause. Every section of this act and every part of each section is hereby declared to be independent of each other, and the holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof.

History: En. Sec. 10, Ch. 258, L. 1947.

TITLE 79

STATE FINANCE

- Chapter 1. General fiscal duties of state auditor, 79-101 to 79-110.
2. General fiscal duties of state treasurer, 79-201 to 79-209.
 3. State depository board—deposit and investment of state funds, 79-301 to 79-306.
 4. Controlling fund accounts, 79-401 to 79-408.
 5. State horticultural revolving fund, 79-501, 79-502.
 6. Perpetual appropriations for support of state institutions—contingent revolving accounts, 79-601 to 79-604.
 7. Taylor grazing act moneys—disposal of, 79-701 to 79-703.
 8. Miscellaneous powers and duties of state treasurer—suspension, 79-801 to 79-813.
 9. Expenditures by state departments in excess of income prohibited, 79-901 to 79-904.
 10. State budget act, 79-1001 to 79-1011.
 11. Purchase of state general fund warrants with land board funds—notice to board of bond sales, 79-1101 to 79-1105.
 12. Montana trust and legacy fund—unified investment plan, 79-1201 to 79-1216.
 13. Post war planning and construction reserve fund, 79-1301 to 79-1308.
 14. Interest and income fund of state educational institutions—biennial statements, 79-1401 to 79-1405.
 15. Payment of interest on land grant warrants—disposal of fines—venue of actions—violating 1909 land act a felony, 79-1501 to 79-1504.
 16. Indian welfare funds—administration, 79-1601 to 79-1603.
 17. Bonds of state and taxing units—amortization preferred—fiscal agencies for payment, 79-1701 to 79-1713.
 18. General refunding act applicable to all outstanding bonds, 79-1801 to 79-1805.
 19. Revenue bond refinancing act of 1937, 79-1901 to 79-1916.
 20. Bond validating act, 79-2001 to 79-2003.

NOTE.—Some legislation relating to the issue, sale and payment of certain bonds of the state of Montana has been omitted from this code as not being permanent and general in nature. See Ch. 182, L. 1945 relating to Montana State Hospital bonds; Ch. 24, L. 1941, relating to insane asylum funding revenue bonds; Ch. 121, L. 1943, refunding the funding bonds of 1933; Ch. 31, L. 1939 relating to Tuberculosis Sanitorium Revenue Bonds; Chapters 39, 149, 163 and 174, L. 1945 relating to the authorization, sale and payment of debentures issued under the highway anticipation debenture act of 1945.

CHAPTER 1

GENERAL FISCAL DUTIES OF STATE AUDITOR

- Section 79-101. State auditor—general fiscal duties.
- 79-102. Certificate of settlement.
 - 79-103. Special duty as to school fund.
 - 79-104. Order in which warrants must be drawn.
 - 79-105. Proceedings against defaulters.
 - 79-106. To have access to offices.
 - 79-107. Official bond.
 - 79-108. Cancellation of unclaimed state warrants.
 - 79-109. Issuance of duplicate warrant.
 - 79-110. Auditor ex officio investment commissioner.

79-101. (151) State auditor—general fiscal duties. It is the duty of the state auditor:

1. To superintend the fiscal concerns of the state.
2. To report to the governor, on the first Monday of November next preceding each regular session of the legislative assembly, a statement of

funds of the state, its revenues, of the public expenditures during the two preceding fiscal years, together with a detailed estimate of the expenditures to be defrayed from the treasury for the two ensuing fiscal years, specifying therein each object of expenditure, and distinguishing between such as are provided for by permanent or temporary appropriation, and such as must be provided for by a new statute, and suggesting the means from which such expenditures are to be defrayed, and to make a semi-annual report to the governor, as provided in section 59-705.

3. To accompany his biennial reports with tabular statements, showing: first, the amount of each appropriation for the two preceding fiscal years, the amount expended, and the balance, if any; second, the amount of revenue chargeable to each county for such years, the amount paid, and the amount unpaid or due therefrom.

4. When requested, to give information in writing to either house of the legislative assembly relating to the fiscal affairs of the state or the duties of his office.

5. To suggest plans for the improvement and management of the public revenues.

6. To keep and state all accounts in which the state is interested.

7. To keep an account of all warrants drawn upon the treasurer, and a separate account under the head of each specific appropriation, showing at all times the unexpended balance of such appropriation.

8. To keep an account between the state and the state treasurer, and therein charge the state treasurer with the balance in the treasury when he came into office, and with all moneys received by him, and credit him with all warrants drawn on and paid by him.

9. To keep a register of warrants, showing the fund upon which they are drawn, the number, in whose favor, for what service, the appropriation applicable to the payment thereof, when the liability accrued, and a receipt from the person to whom the warrant is delivered.

10. To audit all claims against the state in cases where there are sufficient provisions of law for the payment thereof.

11. To examine and settle the accounts of all persons indebted to the state, and certify the amount to the treasurer, and, upon presentation and filing of the treasurer's receipt therefor, to give such person a discharge and charge the treasurer therewith.

12. In his discretion to require any person presenting an account for settlement to be sworn before him, and to answer, orally or in writing, as to any facts relating to it.

13. To require all persons who have received any moneys belonging to the state, and have not accounted therefor, to settle their accounts.

14. In his discretion to inspect the books of any persons charged with the receipt, safe keeping, or disbursement of public moneys.

15. In his discretion to require all persons who have received moneys or securities, or have had the disposition or management of any property of the state of which an account is kept in his office, to render statements thereof to him; and all such persons must render statements at such times and in such form as he may require.

16. To direct and superintend the collection of all moneys due the state, and institute suits in its name for all official delinquencies in relation

to the assessment, collection, and payment of the revenue, and against persons who by any means have become possessed of public money or property, and failed to pay over or deliver the same, and against all debtors of the state; of which suits the courts of the county in which the seat of government may be located have jurisdiction, without regard to the residence of the defendants.

17. To draw warrants on the state treasurer for the payment of moneys directed by law to be paid out of the treasury; but no warrant must be drawn unless authorized by law, and upon an unexhausted specific appropriation provided by law to meet the same. Every warrant must be drawn upon the fund out of which it is payable, and specify the service for which it is drawn, when the liability accrued, and the specific appropriation applicable to the payment thereof.

18. To furnish the state treasurer with a list of warrants drawn upon the treasury, specifying the amount and number of each warrant, and the name of the person in whose favor it is drawn.

19. To procure and have printed all state licenses, and to sign the same and furnish the state treasurer with such licenses and charge him with the same.

20. To authenticate with his official seal all drafts and warrants drawn by him, and all copies of papers issued from his office.

21. To collect and pay into the state treasury all fees received by him.

22. To perform such other duties as are prescribed by law.

History: En. Sec. 420, Pol. C. 1895; M 557, 567, 197 P 988; Porter v. Hartley re-en. Sec. 170, Rev. C. 1907; re-en. Sec. et al., 67 M 244, 251, 216 P 344.
151, R. C. M. 1921. Cal. Pol. C. Sec. 433.

Cross-Reference

Investment commissioner, sec. 66-2026.

States \Rightarrow 73.

59 C.J. States § 139.

References

State v. State Board of Examiners, 59

49 Am. Jur. 267, States, Territories and Dependencies, § 55.

79-102. (152) Certificate of settlement. The certificate mentioned in subdivision 11, of section 79-101, must show by whom the payment is to be made; the amount thereof, and the fund into which it is to be paid, and must be numbered in order, beginning with number 1 at the commencement of each fiscal year.

History: En. Sec. 421, Pol. C. 1895; States \Rightarrow 122.
re-en. Sec. 171, Rev. C. 1907; re-en. Sec. 59 C.J. States § 373.
152, R. C. M. 1921. Cal. Pol. C. Sec. 434.

79-103. (153) Special duty as to school fund. The state auditor must keep a separate account of the school fund, and of the interest and income thereof, together with such moneys as may be raised by special tax or otherwise for school purposes. He must, on the first day of February and the first day of August of each year, report to the superintendent of public instruction a statement of the securities belonging to the school fund, of the moneys in the treasury subject to apportionment, and the several sources from which they accrued. He must draw his warrant on the state treasurer in favor of any county treasurer whenever such county treasurer presents, with his indorsement, an order drawn by the superintendent of public instruction in favor of such county.

History: En. Sec. 422, Pol. C. 1895; Schools and School Districts 18.
 re-en. Sec. 172, Rev. C. 1907; re-en. Sec. 56 C.J. Schools and School Districts
 153, R. C. M. 1921. Cal. Pol. C. Sec. 435. § 345 et seq.

79-104. (154) Order in which warrants must be drawn. All warrants for claims which have been audited by the board of examiners and filed in his office must be drawn in the order of the numbers placed upon them by that board.

History: En. Sec. 423, Pol. C. 1895; States 138.
 re-en. Sec. 173, Rev. C. 1907; re-en. Sec. 59 C.J. States § 104.
 154, R. C. M. 1921. Cal. Pol. C. Sec. 436.

79-105. (155) Proceedings against defaulters. Whenever any person has received moneys, or has money or other personal property which belongs to the state by escheat or otherwise, or has been entrusted with the collection, management, or disbursement of any moneys, bonds, or interest accruing therefrom, belonging to or held in trust by the state, and fails to render an account thereof to, and make settlement with, the state auditor within the time prescribed by law, or when no particular time is specified, fails to render such account and make settlement, or who fails to pay into the state treasury any moneys belonging to the state, upon being required so to do by the state auditor, within twenty days after such requisition, the state auditor must state an account with such person, charging twenty-five per cent. damages, and interest at the rate of ten per cent. per annum from the time of the failure; a copy of which account in any suit therein is prima facie evidence of the things therein stated; but in case the state auditor cannot, for want of information, state an account, he may in any action brought by him aver that fact, and allege generally the amount of money or other property which is due to or which belongs to the state.

History: En. Sec. 424, Pol. C. 1895; States 122
 re-en. Sec. 174, Rev. C. 1907; re-en. Sec. 59 C.J. States § 373.
 155, R. C. M. 1921. Cal. Pol. C. Sec. 437.

79-106. (156) To have access to offices. The state auditor shall have access to all offices of the state for the inspection of such books, papers, and accounts thereof as may concern his duties.

History: En. Sec. 426, Pol. C. 1895; States 73.
 re-en. Sec. 176, Rev. C. 1907; re-en. Sec. 59 C.J. States § 139.
 156, R. C. M. 1921.

79-107. (157) Official bond. The state auditor must execute an official bond in the sum of ten thousand dollars.

History: En. Sec. 427, Pol. C. 1895; States 48.
 re-en. Sec. 177, Rev. C. 1907; re-en. Sec. 59 C.J. States § 202.
 157, R. C. M. 1921. Cal. Pol. C. Sec. 442.

79-108. (158) Cancellation of unclaimed state warrants. The state auditor shall cause to be plainly stamped the words "canceled because not claimed" upon any warrant issued by him, the owner of which may not have been found within six months after the date of the issue of such warrant, which cancellation shall be by stamp across the face of such warrant in red ink, and shall show the date of such cancellation. Such canceled warrant shall also be filed in a special place or file in the office of the state auditor, properly indexed, and shall be separated according to the designated funds shown thereon. The register of warrants in the office of the state auditor,

showing the issue of such warrant, shall show the cancellation of such warrant, and the date thereof, and the proper warrant account shall be charged therewith. Should a person subsequently claim such warrant the state auditor shall, upon a satisfactory showing that such person is the holder of the claim, and is entitled to receive the warrant, issue a lieu warrant to such owner, in the same amount and upon the same fund as that for which the original warrant was drawn, and shall enter such lieu warrant upon the warrant register in the usual manner, and note upon the canceled warrant the date of the issue of such lieu warrant.

History: En. Sec. 1, Ch. 80, L. 1907; States 138.
re-en. Sec. 178, Rev. C. 1907; re-en. Sec. 59 C.J. States § 404.
158, R. C. M. 1921.

79-109. (159) Issuance of duplicate warrant. The state auditor is hereby empowered and authorized to issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana shall have been lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and no such warrant shall be issued or delivered by the state auditor, except the person entitled to receive the same shall deposit with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana, and its officers, harmless on account of the issuance of said duplicate warrant.

History: En. Sec. 1, Ch. 19, L. 1909;
re-en. Sec. 159, R. C. M. 1921.

79-110. (160) Auditor ex officio investment commissioner. The state auditor is ex officio investment commissioner, and his powers and duties as such officer are defined by sections 66-2001 to 66-2026.

History: New section recommended by States 73.
code commissioner, 1921. 59 C.J. States § 138.

CHAPTER 2

GENERAL FISCAL DUTIES OF STATE TREASURER

- Section 79-201. State treasurer—general fiscal duties.
79-202. State moneys, how expended by treasurer.
79-203. Duty of state treasurer to distribute forest reserve money.
79-204. Apportionment of forest reserve funds among counties.
79-205. Per cent allotted to general fund and common school fund.
79-206. Correction of errors in apportionment.
79-207. General fund.
79-208. Registry and interest on state warrants.
79-209. Act not to apply to land grant warrants.

79-201
(174 RCM'35)
New Duties
SL. '49, C. 119
Secs. 1-2
PP. 228-229

79-201. (174) State treasurer—general fiscal duties. It is the duty of the state treasurer:

1. To receive and keep all moneys belonging to the state, and not required to be received and kept by some other person.
2. To file and keep the certificates of the state auditor delivered to him when moneys are paid into the treasury.
3. To deliver to each person paying money into the treasury and to the state auditor a duplicate receipt showing the amount, the sources from which the money accrued, and the funds into which it is paid, which

receipts must be numbered in order, beginning with number one at the commencement of each fiscal year.

4. To pay warrants drawn by the state auditor out of the funds upon and in the order in which they are drawn.

5. Upon payment of any warrant, to take upon the back thereof the receipt of the person to whom it is paid, and file and preserve the same.

6. To keep an account of all moneys received and disbursed.

7. To keep separate accounts of the different funds.

8. To report to the state auditor, on the last day of each month, the amount disbursed for the redemption of bonds and in payment of warrants during the month; which report must show the date and number of such bonds and warrants, the funds out of which they were paid, and the balance of cash on hand in the treasury to the credit of each fund.

9. At the request of either house of the legislative assembly, or of any committee thereof, to give information in writing as to the condition of the treasury, or upon any subject relating to the duties of his office.

10. To report to the governor at the time prescribed in section 59-702 of this code the exact balance in the treasury to the credit of the state, with a summary of the receipts and payments of the treasury during the two preceding fiscal years; and to make a semi-annual report to the governor as provided in section 59-705.

11. To authenticate with his official seal all writings and papers issued from his office.

12. To discharge such other duties as may be imposed upon him by law.

History: En. Sec. 440, Pol. C. 1895;
re-en. Sec. 179, Rev. C. 1907; re-en. Sec.
174, R. C. M. 1921. Cal. Pol. C. Sec. 452.

States—73.

59 C.J. States § 153.

49 Am. Jur. 266, States, Territories and
Dependencies, § 54.

Mandamus to compel payment of war-
rant. 98 ALR 442.

Cross-Reference

Deputy, appointment, sec. 82-601.

79-202. (193) State moneys, how expended by treasurer. No moneys received by the state treasurer shall be paid out by him except upon state warrant issued by the state auditor, and the state auditor shall not issue his warrant upon the state treasurer save by virtue of unexhausted appropriation therefor made by the legislative assembly, and after the presentation to him of a claim duly approved by the state board of examiners, save and except for salaries and compensation of officers fixed by law; provided, however, that nothing in this act contained shall require an appropriation by the legislature for the administering of any specific trust funds administered by any state board, commission or department.

History: En. Sec. 2, Ch. 112, L. 1921;
re-en. Sec. 193, R. C. M. 1921.

States—130, 136.

50 C.J. States §§ 380, 402.

42 Am. Jur. 715 et seq., Public Funds.

79-203. (175) Duty of state treasurer to distribute forest reserve money. The state treasurer, for the purpose of carrying out the provisions of an act of congress of May 23, 1908, 35 United States statutes at large, p. 260, and all acts subsequent thereto, shall divide and distribute all forest reserve moneys received by the state of Montana thereunder, to and among the several counties entitled thereto, and pay the same to the several county

treasurers of such counties within thirty days after receiving same, as directed by the state auditor.

History: En. Sec. 1, Ch. 26, L. 1915;
re-en. Sec. 175, R. C. M. 1921.

Woods and Forests 8.
59 C.J. States § 143.
71 C.J. Woods and Forests § 143.

79-204. (176) Apportionment of forest reserve funds among counties.

The state auditor shall apportion said forest reserve funds between the several counties as follows, to-wit:

All funds received from each forest reserve shall be apportioned between the counties in which such forest reserve is situated in proportion to the acreage of such forest reserve in each county, and the state treasurer shall pay the several amounts so apportioned to the respective counties.

History: En. Sec. 2, Ch. 26, L. 1915;
re-en. Sec. 176, R. C. M. 1921.

79-205. (177) Per cent allotted to general fund and common school fund.

The forest reserve funds so apportioned to each county shall be apportioned by the county treasurer in each county between the several funds as follows:

To the general road fund, sixty-six and two-thirds per cent of the total amount received. To the common school fund thirty-three and one-third per cent of the total sum received. Provided, that in counties wherein special road districts have been created according to law the board of county commissioners shall distribute a proportionate share of the $66\frac{2}{3}$ per cent of the total amount received for the general road fund, to such special road district or districts within the county based upon the percentage that the total area of such road district bears to the total area of the entire county.

History: En. Sec. 3, Ch. 26, L. 1915;
re-en. Sec. 177, R. C. M. 1921; amd. Sec.
1, Ch. 66, L. 1931.

Counties 161.
20 C.J.S. Counties § 231.

79-206. (178) Correction of errors in apportionment. In the event of any error or errors heretofore or hereafter made in the apportionment or distribution of said forest reserve funds, such error or errors shall be corrected by the state auditor and state treasurer, equalizing future payments to the several counties so that the total proportionate sum received by each county shall be as fixed in section 79-204.

History: En. Sec. 4, Ch. 26, L. 1915;
re-en. Sec. 178, R. C. M. 1921.

Woods and Forests 8.
71 C.J. Woods and Forests § 23.

79-207. (179) General fund. The general fund consists of moneys received into the treasury and not especially appropriated to any other fund.

History: En. Sec. 441, Pol. C. 1895;
re-en. Sec. 180, Rev. C. 1907; re-en. Sec.
179, R. C. M. 1921. Cal. Pol. C. Sec. 454.

States 126.
59 C.J. States § 378.

79-208. (180) Registry and interest on state warrants. It is the duty of the state treasurer on the presentation of state warrants, regularly issued, to pay the same out of any funds available for such payments, and in the event there are no funds available for such payment, he must register each warrant in a book or register to be kept for the purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, the number and amount thereof, and he shall endorse on each

warrant so registered, on its face, "Presented for payment and not paid for want of funds and registered in this office this..... day of.....," inserting the date of registration, and he shall affix his signature as such treasurer thereto; and all warrants so registered and endorsed on and after March first, 1927, shall bear interest at the rate of four per cent per annum until called for payment, after date of which call interest shall cease; and all warrants shall be redeemed and paid in the order of their registration and in the manner set forth in section 79-801.

History: En. Sec. 1, p. 98, L. 1899; re-en. Sec. 181, Rev. C. 1907; amd. Sec. 1, Ch. 260, L. 1921; amd. Sec. 1, Ch. 6, Ex. L. 1921; re-en. Sec. 180, R. C. M. 1921; amd. Sec. 1, Ch. 159, L. 1923; amd. Sec. 1, Ch. 111, L. 1925; amd. Sec. 1, Ch. 2, L. 1927.

References

State v. State Board of Examiners, 59 M 557, 567, 197 P 988; referred to as sec. 181, R. C. M. 1907, State v. State Board of Examiners, 74 M 1, 19, 238 P 316.

States $\text{\textcircled{C}}$ 142.

59 C.J. States § 408.

79-209. (181) Act not to apply to land grant warrants. Nothing herein contained shall be construed to apply to any warrants issued on account of any land grant fund, or by virtue of any special act authorizing the issuance thereof.

History: En. Sec. 2, p. 99, L. 1899; re-en. Sec. 182, Rev. C. 1907; re-en. Sec. 181, R. C. M. 1921.

CHAPTER 3

STATE DEPOSITORY BOARD—DEPOSIT AND INVESTMENT OF STATE FUNDS

- Section 79-301. State depository board—funds in the hands of the state treasurer.
 79-302. Interest requirements on Montana public funds—federal conformity.
 79-303. In what state and federal securities surplus state funds may be invested.
 79-304. State depository board authorized to invest money in state bond sinking and interest fund in certain securities.
 79-305. Investment of special funds in general fund warrants.
 79-306. State treasurer as treasurer of state agencies—deposits of moneys.

79-301. (182) State depository board—funds in the hands of the state treasurer. (1) It shall be the duty of the state treasurer to deposit public moneys in his possession and under his control in solvent banks located in the state of Montana, except as otherwise provided by law, subject to national supervision or state examination, as designated by the state depository board, and no other. The state depository board may require the payment of quarter annual interest on daily balances of collected funds at a rate to be agreed upon between the depository banks and said state depository board, which rate shall be fixed semi-annually: the first rate fixing date to be not later than thirty (30) days after the final passage and approval of this act; thereafter, the interest rate shall be fixed semi-annually during the months of July and January of each year.

(2) No deposits in excess of the amount guaranteed or insured according to law shall be made of state funds by said depository board, or by the state treasurer under the direction of said board, unless such bank shall first have delivered to the state treasurer or trustee with some solvent bank as hereinafter provided, as security therefor, cashier's check or checks issued by the Federal Reserve Bank, bonds of the United States Government and its

dependents, bonds guaranteed by the United States Government or its dependents, bonds of the Federal Land Banks, bonds and warrants of the state of Montana, bonds and warrants of any county of the state of Montana, and bonds of any city, town, or school district of the state of Montana, which are a general obligation of such county, city, town or school district, or bonds of some good solvent surety company authorized to do business in the state of Montana, in at least the amount of such deposits in excess of the amount guaranteed or insured according to law, which bonds or security shall be first approved by the state depository board; provided, that the state depository board may require security in a greater amount than that above named; provided, that when negotiable securities are furnished, such securities may be placed in trust and the trustees' receipt may be accepted in lieu of the actual securities when such receipt is in favor of the state treasurer, his successors in office, and the state of Montana, and the form of receipt and the trustees have been approved by the state examiner.

(3) No deposit of said funds shall be made or permitted to remain in any bank unless such bank shall have first been designated as a depository by said depository board, nor until the security for the deposit in excess of the amount of such deposit guaranteed or insured according to law shall have first been deposited with the state treasurer, or placed with a trustee, as herein provided, and has been approved by the state depository board. All interest paid and collected on deposits shall be by the state treasurer credited to the general fund of the state. The state depository board shall have the power of directing the withdrawal by the state treasurer of all moneys from any bank for any reason.

(4) When moneys shall have been deposited, under the direction of said depository board and in accordance with the law, the treasurer shall not be liable for loss on account of any such deposit occurring through damage by the elements, or for any other cause or reason occasioned through means other than his own neglect, fraud, or dishonorable conduct. It shall be the duty of the state treasurer to deposit funds in such banks, and in such amounts as may be designated by the state depository board, and to withdraw such deposits when instructed so to do by the said board. But said state treasurer shall have the authority, either with or without the direction of said state depository board, to withdraw all of such deposits, or any part thereof, from time to time, to pay and discharge the legal obligations of the state, duly presented to him in accordance with the law, except as above. Nothing herein shall be construed as limiting or impairing the right of the state board of land commissioners to invest public moneys in bonds or other securities as otherwise provided by law.

History: Ap. p. 183, Rev. C. 1907; en. Sec. 1, Ch. 129, L. 1909; re-en. Sec. 182, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1923; amd. Sec. 1, Ch. 180, L. 1929; amd. Sec. 1, Ch. 62, L. 1935.

Insolvent Banks

Held, that section 79-301, the state depository law, and sections 6071 (repealed) and 6803 (repealed), the former requiring state banks to make report of their condition to the superintendent of banks and the latter conferring upon him visitorial

powers with the right to examine their books, do not expressly or by implication waive the state's preference right over unsecured creditors of an insolvent bank to payment of its deposits. *State ex rel. Rankin v. Madison State Bank*, 68 M 342, 347, 218 P 652.

Depositories—6 et seq.

26 C.J.S. Depositories § 8 et seq.

42 Am. Jur. 724, Public Funds, §§ 11 et seq.

79-302. Interest requirements on Montana public funds—federal conformity. The interest requirements on deposits of public funds under the laws of the state of Montana or otherwise by county, city and town treasurers shall not at any time be in violation of any act of the congress of the United States or of any rule or regulation of the federal reserve system or the Federal Deposit Insurance Corporation or any other fiscal agency of the United States or created by it, of which the banks of this state generally may be members or debtors.

History: En. Sec. 1, Ch. 104, L. 1937. Depositories⊕6.
26 C.J.S. Depositories § 8.

79-303. (182.1) In what state and federal securities surplus state funds may be invested. The state depository board may in its discretion by resolution duly adopted and entered upon the minutes of said board authorize and direct the state treasurer to invest any surplus cash in his office in registered warrants of the state of Montana, and/or treasury certificates of the federal government. All warrants purchased shall bear no interest. All warrants purchased shall be entered in an investment register and shall show the number and amount of all warrants.

All treasury certificates purchased shall be entered in an investment register which shall be a solid bound book with numbered pages and shall show the name and number of the treasury certificates, the date of purchase, the date sold, the face amount of the certificates, the amount of interest accrued at the time of sale and the total amount of the certificate and interest.

At the time of purchase, sale or redemption of any warrant or warrants, certificate or certificates under the provisions of this act, the treasurer shall file with the depository board, and also the state examiner, a detailed list of the warrants and certificates so purchased, sold or redeemed, together with interest thereon, and all interest received as a result of such investment shall be credited to the general fund of the state of Montana.

History: En. Sec. 1, Ch. 64, L. 1935; States⊕124.
amd. Sec. 1, Ch. 81, L. 1937. 59 C.J. States §§ 143, 374.

79-304. State depository board authorized to invest money in state bond sinking and interest fund in certain securities. Whenever there is any money in any state bond sinking and interest fund, either now existing or hereafter created and established, which is not required for the immediate payment of any bond principal or interest, or which cannot be used for the payment and redemption of bonds outstanding because of the same not being then redeemable under the option provisions contained therein, the state depository board is hereby authorized to invest such moneys in bonds of the state of Montana, revenue bonds of the state of Montana or bonds of the United States; or in the Montana trust and legacy fund of the state of Montana; in bonds issued by any agency or department of the United States, the payment of principal and interest of which bonds is guaranteed by the United States, and in interest bearing warrants drawn against the general fund of the state of Montana; provided, however, that none of such moneys shall be invested in bonds or securities except such as will be called in and paid at least fifteen (15) days prior to the time such moneys are required for payment of principal and interest of such out-

standing state bonds to which such sinking and interest fund belongs, or the time when such moneys can be used for such purpose because of the optional date provided for in the bonds in which such moneys are invested having arrived.

History: En. Sec. 1, Ch. 68, L. 1941;
amd. Sec. 1, Ch. 101, L. 1945.

79-305. (270) Investment of special funds in general fund warrants. The state board of examiners is hereby empowered to invest any moneys available in the following funds: Escheated estate fund, educational bond interest and sinking fund, and the fish and game fund, in the hands of the state treasurer, in state general fund warrants.

Provided, however, that no money shall be taken from the fish and game fund except with the consent of the Montana fish and game commission.

History: En. Sec. 1, Ch. 1, L. 1921; States~~C~~124.
re-en. Sec. 270, R. C. M. 1921; amd. Sec. 1, 59 C.J. States § 374 et seq.
Ch. 122, L. 1925.

79-306. (192) State treasurer as treasurer of state agencies—deposits of moneys. (1) The state treasurer is hereby designated the treasurer of each and every state board, commission, bureau, department and state institution, now existing or hereafter to be created or established. All departments of the state government located at the capitol shall deposit with the state treasurer daily all moneys, credits, evidences of indebtedness and securities received, and the state treasurer shall give such departments credit on their suspense accounts, which the state treasurer is hereby directed to set up, and such deposits shall be subject to the final payment of all items, and the state treasurer is directed to charge back against such suspense accounts all items unpaid for any reason.

(2) All state boards, commissions, bureaus, departments and state institutions not located in the capitol shall deposit daily all moneys, credits, evidences of indebtedness and securities in banks located in the city or town in which such boards, commissions, bureaus, departments and state institutions are situated, provided there is a qualified bank in such city or town, to be designated by the state treasurer with the approval of the state depository board, or with the state treasurer. Such banks shall furnish indemnifying bonds or pledge securities in amounts sufficient to cover all such deposits at all times, and such deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and such deposits shall draw interest as other state moneys. Indemnifying bonds and pledged securities shall be subject to the approval of the state depository board.

(3) On the fifteenth and the last day of each calendar month, every department, state board, commission, bureau, state institution, and every other employee or agent of the state of Montana shall make report and settlement with the state treasurer, and the state treasurer shall issue his official receipts to all departments, state boards, commissions, bureaus, state institutions and other employee or agent, reserving the right to hold in his possession such receipts subject to cancellation until all items covered in same shall have been finally paid; provided, however, that the provisions of this

act shall not apply to the operation of the funds of the workmen's compensation act, as prescribed in sections 92-101 to 92-1222, inclusive, nor to state regulatory boards, nor to the provisions of section 79-602, relating to revolving funds.

History: En. Sec. 1, Ch. 112, L. 1921; re-en. Sec. 192, R. C. M. 1921; amd. Sec. 1, Ch. 157, L. 1931.

Operation and Effect

Held, that nothing contained in sections 79-306 and 79-603, or in section 79-601, relative to the duties of the state treasurer and state boards, is out of harmony with chap. 94, laws of 1929 (sections 75-201 to 75-206 concerning power of state board of education to erect and operate

dormitories). *Barbour v. State Board of Education*, 92 M 321, 328, 13 P 2d 225.

References

Carey v. McFatrige, 115 M 278, 293, 142 P 2d 329.

Depositories—6-9; States—73.

26 C.J.S. Depositories §§ 7, 8, 9, 11, 12;

59 C.J. States § 143.

~ 42 Am. Jur. 715, Public Funds, generally.

CHAPTER 4

CONTROLLING FUND ACCOUNTS

- Section 79-401. Controlling fund accounts.
 79-402. Recording required in various funds.
 79-403. Funds included in state trust and agency funds account.
 79-404. Funds included in federal trust and agency funds account.
 79-405. Funds included in federal land grant permanent funds account.
 79-406. Funds included in federal land grant income fund.
 79-407. Funds included in interest bearing invested funds account.
 79-408. New funds, how placed.

79-401. (198.1) Controlling fund accounts. The state treasurer and state auditor are hereby directed to open and maintain upon their respective books of accounts, the following controlling fund accounts for the recording and reporting of all moneys coming into the custody of the state: General Fund; Bounty Fund; Fish and Game Fund; Livestock Commission Fund; Livestock Sanitary Board Fund; Educational Bond Interest and Sinking Fund; Veterans' Welfare Bond Interest and Sinking Fund; Hail Insurance Fund; Escheated Estates Fund; Soldiers and Sailors Home Fund; Law Enforcement Fund; State Trust and Agency Funds; Federal Trust and Agency Funds; Federal Land Grant Permanent Funds; Federal Land Grant Income Fund; Interest Bearing Investment Funds.

History: En. Sec. 1, Ch. 110, L. 1923.

States—127.

References

59 C.J. States § 378.

State v. North American Car Corporation, ___ M ___, 164 P 2d 161, 166.

79-402. (198.2) Recording required in various funds. In the accounts above designated as General Fund, Bounty Fund, Fish and Game Fund, Livestock Commission Fund, Livestock Sanitary Board Fund; Educational Bond Interest and Sinking Fund, Veterans' Welfare Bond Interest and Sinking Fund, Hail Insurance Fund, Escheated Estates Fund, Soldiers and Sailors Home Fund and Law Enforcement Fund, shall be recorded all transactions in anyway affecting the receipt or disbursement of moneys now accounted for under the above titles by virtue of existing statutes without change from the present system.

History: En. Sec. 2, Ch. 110, L. 1923.

79-403. (198.3) Funds included in state trust and agency funds account.

The fund account above designated as the state trust and agency funds account shall be a general controlling account, recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor, known as the anti hog cholera serum fund; architectural board fund; attorneys license fund; biological survey fund; Carey land act board fund; Carey land filing fund; certified public accountants fund; chiropractic examining board fund; county portion inheritance tax fund; depository interest fund; Dixon endowment fund; educational bond fund series "A"; educational bond fund series "B"; educational bond fund series "C"; embalmers license fund; fire marshal's fund; gasoline license tax fund; hail insurance administration fund; highway commission fund; industrial accident board fund; irrigation commission fund; law library fund; livestock emergency fund; medical board fund; motor vehicle administration fund; protested license tax fund; real estate license fund; stock estray fund; teachers certificate fund; teachers permanent fund; teachers retirement fund; veterans welfare commission fund; and residence dormitory construction funds as heretofore or hereafter designated by the state board of education under sections 75-201 to 75-206, and any acts supplementary to or amendatory of said sections.

History: En. Sec. 3, Ch. 110, L. 1923;
amd. Sec. 1, Ch. 157, L. 1947.

79-404. (198.4) Funds included in federal trust and agency funds account. The fund account above designated as the Federal Trust and Agency Funds shall be a general controlling account recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor, known as the Agricultural College Adams Fund; Agricultural College Flax Fund; Agricultural College Hatch Fund; Agricultural College Morrill-Nelson Fund; Agricultural College Smith-Lever Fund; Board of Health Disease Control Fund; Board of Health Maternity Hygiene Fund; Forest Reserve Fund; Highway Trust Fund; Oil Royalties Fund; Soldiers Home Maintenance Fund; Vocational Education Fund; Vocational Rehabilitation Fund.

History: En. Sec. 4, Ch. 110, L. 1923.

79-405. (198.5) Funds included in federal land grant permanent funds account. The fund account above designated as the Federal Land Grant Permanent Funds Account, shall be a general controlling account recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor, known as the Agricultural College Morrill Act Fund; Agricultural College Permanent Fund; Common School Permanent Fund; Deaf and Blind School Permanent Fund; Normal School Permanent Fund; Reform School Permanent Fund; School of Mines Permanent Fund; Soldiers Home Permanent Fund; University Permanent Fund.

History: En. Sec. 5, Ch. 110, L. 1923.

79-406. (198.6) Funds included in federal land grant income fund. The fund account above designated as the Federal Land Grant Income Fund shall be a general controlling account recording all financial operations in

anywise affecting the funds now carried in the books of the state treasurer and the state auditor known as the Agricultural College Interest and Income Fund; Capitol Building Interest and Sinking Fund; Common School Interest and Income Fund; Deaf and Blind School Interest and Income Fund; Normal School Interest and Income Fund; Reform School Interest and Income Fund; School of Mines Interest and Income Fund; University Interest and Income Fund.

History: En. Sec. 6, Ch. 110, L. 1923.

References

State v. North American Car Corporation, — M —, 164 P 2d 161, 166.

79-407. (198.7) Funds included in interest bearing invested funds account. The fund account above designated as the Interest Bearing Invested Funds Account shall be a general controlling account recording all financial operations in anywise affecting the funds now carried in the books of the state treasurer and the state auditor known as the Agricultural College Permanent Fund; Agricultural College Morrill Fund; Common School Permanent Fund; Common School Income Fund; Deaf and Dumb School Permanent Fund; Normal School Permanent Fund; Reform School Permanent Fund; School of Mines Permanent Fund; Soldiers Home Permanent Fund; Teachers Permanent Fund; University Permanent Fund.

History: En. Sec. 7, Ch. 110, L. 1923.

79-408. (198.8) New funds, how placed. Any new funds hereafter to be created or accepted are hereby placed under their respective general headings, as above designated.

History: En. Sec. 8, Ch. 110, L. 1923.

CHAPTER 5

STATE HORTICULTURAL REVOLVING FUND

Section 79-501. State horticultural revolving fund—composition and use of.

79-502. Reimbursement of state general fund.

79-501. (3634.1) State horticultural revolving fund—composition and use of. The state treasurer and state auditor are hereby directed to open and maintain upon their respective books of accounts a fund to be known as the state horticultural revolving fund, in which shall be placed the following moneys, to-wit:

1. Such sums as the legislature may from time to time appropriate for the use of said fund.

2. All moneys collected by either the commissioner of agriculture or by the county treasurer under the authority of section 3-1204, where the expense incurred was paid by warrants drawn on the said state horticultural revolving fund.

3. All moneys in said fund at the time of the passage and approval of this act.

4. All moneys heretofore expended from said fund, which shall be hereafter returned thereto.

Such fund shall be maintained as a revolving fund for the use of the division of horticulture of the department of agriculture, labor, and industry, out of which shall be paid such claims as may be approved by the com-

missioner of agriculture and the board of examiners for labor and for other expenses incurred for the removal of infected trees.

History: En. Sec. 1, Ch. 144, L. 1925; States 127.
amd. Sec. 1, Ch. 51, L. 1927. 59 C.J. States § 378.

79-502. (3634.2) Reimbursement of state general fund. The state general fund shall be reimbursed for such sums as the legislature from time to time may appropriate for the horticultural revolving fund by the return to it of all collections made by the commissioner of agriculture, or by the county treasurers as provided in sections 3-1204, 3-1303 and 3-1304.

History: En. Sec. 2, Ch. 144, L. 1925. States 128.
59 C.J. States § 377.

CHAPTER 6

PERPETUAL APPROPRIATIONS FOR SUPPORT OF STATE INSTITUTIONS —CONTINGENT REVOLVING ACCOUNTS

- Section 79-601. Support of state institutions.
79-602. Contingent revolving accounts—when established.
79-603. State institutions may retain certain moneys, when.
79-604. Violation of act misdemeanor.

79-601. (194) Support of state institutions. For the support and endowment of each and every of the state institutions of the state of Montana now existing or hereafter to be created there is annually and perpetually appropriated respectively:

1. The income from all permanent funds and endowments, and from all land grants as provided by law and all such contributions as may be derived from public or private bounty. All such funds shall be kept by the state treasurer in specific fund accounts, so entitled as to clearly indicate their purposes and sources. All moneys received or collected on and after July 1, 1941, by all higher educational institutions, reformatory, custodial and penal institutions, state hospitals, and sanitariums, for any purpose whatever, except such as may have been heretofore pledged to secure the payment of principal and interest of bonds issued in connection with the construction of buildings, or which may constitute temporary deposits, all or part of which may be subject to withdrawal or repayment, shall be paid over to the state treasurer who shall deposit the same to the credit of the general fund of the state.

History: En. Sec. 3, Ch. 112, L. 1921;
re-en. Sec. 194, R. C. M. 1921; amd. Sec. 3,
Ch. 14, L. 1941.

Operation and Effect

Held, that nothing contained in sections 79-306 and 79-603, or in section 79-601, relative to the duties of the state treasurer and state boards, is out of harmony with chap. 94, laws of 1929 (sections

75-201 to 75-206 concerning power of state board of education to erect and operate dormitories). *Barbour v. State Board of Education*, 92 M 321, 328, 13 P 2d 225.

States 127, 131.
59 C.J. States § 378 et seq.
42 Am. Jur. 744, Public Funds, §§ 42 et seq.

79-602. (195) Contingent revolving accounts—when established. The state board of examiners may in its discretion, by resolution duly adopted and entered upon the minutes of said board, authorize the establishment and maintenance at any and all of the state institutions, or in any of the departments, boards, or commissions, of Montana of contingent revolving

79-601
(S.L. '41, C. 14
Sec. 3)
194 P.(2d) 638
199 P.(2d) 971

accounts, transferring in trust to the business offices of said institutions such sums of money as may appear necessary, to be used by said institutions for the payment of demands requiring immediate cash payment, under specific regulations to be established by said board of examiners. But each and every state institution granted a contingent revolving account shall report to the state board of examiners monthly all transactions involving such contingent revolving accounts, with proper vouchers for every payment made therefrom. The state board of examiners may cancel such authorizations and recall such funds at pleasure.

History: En. Sec. 4, Ch. 112, L. 1921;
re-en. Sec. 195, R. C. M. 1921.

When Change in Method Matter for Legislature

This section, authorizing the state board of examiners to establish revolving accounts for state institutions, departments or commissions, does not vest in the veterans welfare commission any power that may not be modified or repealed by subse-

quent legislation; hence the only remedy available to the commission to correct the method of handling and accounting for the funds allotted to it by the general appropriation bill lies with the legislature, and not with the courts. *State ex rel. Davidson v. Ford*, 115 M 165, 173, 141 P 2d 373.

States—127.

59 C.J. States § 378.

79-603. (196) State institutions may retain certain moneys, when. The state board of examiners may in its discretion, by resolution duly adopted and entered upon the minutes of said board, permit any state institution to retain in its possession, under such conditions as the board may prescribe, incomes from dormitories conducted by state institutions, and moneys deposited in trust by students, members, inmates or other persons, which may be subject to refund to the depositors on demand or otherwise. The state board of examiners may cancel such permission and require the deposit of any or all such funds with the state treasurer at its pleasure; provided, however, that the state treasurer, with the consent of the state depository board, shall designate depositories for such funds and securities, and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in said depositories.

History: En. Sec. 5, Ch. 112, L. 1921;
re-en. Sec. 196, R. C. M. 1921; amd. Sec. 2, Ch. 157, L. 1931.

Operation and Effect

Held, that nothing contained in sections 79-306 and 79-603, or in section 79-601, relative to the duties of the state treasurer and state boards, is out of harmony with

chap. 94, laws of 1929 (sections 75-201 to 75-206 concerning power of state board of education to erect and operate dormitories). *Barbour v. State Board of Education*, 92 M 321, 328, 13 P 2d 225.

States—127.

59 C.J. States § 378.

79-604. (197) Violation of act misdemeanor. Any state officer or other employee or agent of the state who violates any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction shall be fined in a sum not exceeding five hundred dollars for each and every offense.

History: En. Sec. 6, Ch. 112, L. 1921;
re-en Sec. 197, R. C. M. 1921.

States—81.

59 C.J. States § 230 et seq.

CHAPTER 7

TAYLOR GRAZING ACT MONEYS—DISPOSAL OF

Section 79-701. State treasurer to be custodian of moneys received under Taylor grazing act.

79-702. Apportionment of money to counties and expenditure thereof.
 79-703. Scope of act.

79-701. (191.1) State treasurer to be custodian of moneys received under Taylor grazing act. From and after the passage and approval of this act, the state treasurer shall be the custodian of all moneys that the treasurer of the United States may transfer to the state of Montana under the terms of section ten (10) of the Taylor grazing act approved June 28, 1934, (Public No. 482), which provides that the secretary of the United States treasury pay one-half of the moneys received from each grazing district each year to the state where collected, to be expended as the legislature may prescribe.

History: En. Sec. 1, Ch. 146, L. 1935. Public Lands 17.
 50 C.J. Public Lands § 43.

79-702. (191.2) Apportionment of money to counties and expenditure thereof. (1) It shall be the duty of the state treasurer to properly apportion and allocate all moneys received from the treasurer of the United States as provided for in section ten (10) of the Taylor grazing act approved June 28, 1934, and as amended June 26, 1936, to the county treasurers, and to furnish to each county treasurer together with the warrant to said county, a statement showing what portion of the moneys evidenced by said warrant was earned under the provisions of section three (3) of said Taylor grazing act (by grazing districts) and/or what portion of said moneys was earned under section fifteen (15) of said Taylor grazing act (leases of isolated tracts).

(2) It shall be the duty of the county treasurers to allocate the funds received under the provisions of section ten (10) of the Taylor grazing act as follows:

a. The moneys earned under section three (3) thereof (by grazing districts) to a fund to be designated as a special grazing fund, which fund shall be paid on warrants of authority issued by the district advisory board of the Taylor grazing act when signed by the chairman and secretary of said district advisory board.

The funds comprising said special grazing fund shall be expended only for range improvements such as fences, reservoirs, wells, and for such other range improvements as the district advisory board may approve. Before any improvements herein provided for can be made, or any money expended, such improvements shall be approved by the district advisory board and a record of approval of such improvements shall be spread upon the minute records of the board, and

b. Of the moneys earned under section fifteen (15) thereof (by leases of isolated tracts).

1. If said county or any portion thereof is embraced within a grazing district created under the provisions of the Taylor grazing act;

a. Fifty per cent. (50%) thereof to the special grazing fund and to be expended in the same manner as hereinbefore provided for moneys earned under section three (3) of the said Taylor grazing act, and

b. Fifty per cent. (50%) thereof to the common school fund of said county.

2. If said county, in whole or in part, is not embraced within such a grazing district;

79-702
 (191.2 RCM
 '35)
 Amended
 S.L. '49, C. 96
 Sec. 1, P. 197

- a. Fifty per cent. (50%) thereof to the general fund of said county, and
- b. Fifty per cent. (50%) thereof to the common school fund of said county.

History: En. Sec. 2, Ch. 146, L. 1935; Counties \Rightarrow 161; Public Lands \Rightarrow 17.
 amd. Sec. 1, Ch. 55, L. 1937; amd. Sec. 1, 20 C.J.S. Counties § 231; 50 C.J. Public
 Ch. 102, L. 1939. Lands § 43.

79-703. Scope of act. This act shall be in full force and effect from and after its passage and approval and its provisions shall apply to all funds now in the hands of county treasurers or hereafter to be received by county treasurers under, and by virtue of, the provisions of the Taylor grazing act.

History: En. Sec. 2, Ch. 102, L. 1939.

CHAPTER 8

MISCELLANEOUS POWERS AND DUTIES OF STATE TREASURER —SUSPENSION

- Section 79-801. Posting list of warrants.
 79-802. Books to be kept open.
 79-803. Cancellation of defaulted war defense loans authorized.
 79-804. Appointment and salary of stenographer.
 79-805. Access to offices.
 79-806. Separate account of funds to be kept—report to governor.
 79-807. Advertising for bids for publishing reports.
 79-808. Contract for publishing report.
 79-809. Bond of state treasurer.
 79-810. Quarterly report of depositories.
 79-811. Temporary suspension of treasurer.
 79-812. Appointment in place of suspended treasurer.
 79-813. Sale of property in escheated estates—disposal of proceeds.

79-801. (183) Posting list of warrants. The state treasurer must quarterly post upon the door of his office a list of all warrants that he may have funds in the treasury to redeem or pay, the payment of which has not been demanded during the last quarter.

History: En. Sec. 444, Pol. C. 1895; re-en. Sec. 184, Rev. C. 1907; re-en. Sec. 183, States \Rightarrow 142.
 R. C. M. 1921. 59 C.J. States § 408.

References

State v. State Board of Examiners, 74
 M 1, 19, 238 P 316.

79-802. (184) Books to be kept open. The treasurer must keep his books open at all times for the inspection of the governor, state examiner, board of examiners, the members of the legislative assembly, and any committee appointed to examine them by either house thereof.

History: En. Sec. 445, Pol. C. 1895; re-en. Sec. 185, Rev. C. 1907; re-en. Sec. 184, States \Rightarrow 76.
 R. C. M. 1921. 59 C.J. States § 143.

79-803. Cancellation of defaulted war defense loans authorized. The state treasurer and all other state offices or state departments, affected thereby, are hereby authorized to cancel of record, all war defense loans, seed or otherwise, made to or held by the state of Montana, under the provisions of sections 5624-5637 inclusive R. C. M., 1921, which were defaulted, and which have been extinguished by reason of the application of the statute of limitations, or other laws of the state of Montana.

History: En. Sec. 1, Ch. 190, L. 1939.

NOTE.—The sections of the 1921 Code referred to above were enacted at the 1918 Extraordinary Session of the Legislature and related to War Defense Bonds author-

ized in connection with World War I. Not being of a permanent and general nature these statutes were omitted from the 1935 Code and do not appear in this Code.

79-804. (185) Appointment and salary of stenographer. The state treasurer is hereby authorized and empowered to appoint a stenographer, at a salary of twelve hundred dollars per year, payable monthly.

History: En. Sec. 1, Ch. 5, L. 1909;
re-en. Sec. 185, R. C. M. 1921.

States—53.
59 C.J. States §§ 188, 207.

79-805. (186) Access to offices. The state treasurer shall have full access to all offices of the state for inspection of such books, papers, and accounts thereof as concern his duties.

History: En. Sec. 447, Pol. C. 1895;
re-en. Sec. 187, Rev. C. 1907; re-en. Sec.
186, R. C. M. 1921.

States—73.
59 C.J. States § 143.

79-806. (187.1) Separate account of funds to be kept—report to governor. The state treasurer must keep a separate account of each fund in his hands and must at the end of each quarter of the fiscal year report to the governor in writing, under oath, the amount of all moneys in his hands to the credit of each such fund, and the place or places where the same is kept or deposited, and the number and amount of every warrant paid or redeemed by him during the quarter. The separate accounts shall not be published in detail, but the treasurer shall prepare a balance sheet showing a summary of the separate accounts, which balance sheet shall be transmitted to the governor for verification and publication. The governor must verify the report and cause the same, as summarized, to be immediately published once as news matter in the newspaper printed and circulated at the seat of government of the state of Montana, which is the lowest bidder for such printing, as required by law. In publishing the amount of every warrant paid as herein provided, it shall not be considered to also require the publication of the original amount of the warrant and in addition the amount of interest thereon, but such publication shall only be the number and original amount of such warrant.

History: En. Sec. 1, Ch. 6, L. 1925.

States—76.
59 C.J. States § 143.

79-807. (187.2) Advertising for bids for publishing reports. Immediately upon the taking effect of this act, and for such length of time thereafter as the constitution of the state of Montana shall continue to require the publication of the reports hereinafter referred to, it shall be the duty of the state purchasing agent to advertise for bids for the publication of such quarterly reports. Such advertisement for bids shall be made at least once a year.

History: En. Sec. 2, Ch. 6, L. 1925.

States—98.
59 C.J. States § 297.

79-808. (187.3) Contract for publishing report. The contract for the publication of said report shall be let by the state purchasing agent, subject to the approval of the state board of examiners, to the lowest responsible bidder and shall be for a period of not longer than one year, and it shall

not be let for a price totaling an excess of two thousand dollars (\$2,000.00) for a period of one year.

History: En. Sec. 3, Ch. 6, L. 1925.

States[Ⓒ]98.

59 C.J. States § 301.

79-809. (188) Bond of state treasurer. The state treasurer must execute an official bond in the sum of two hundred thousand dollars, and may furnish as surety on said bond any surety company or companies which have complied with the laws of this state authorizing surety companies to do business herein, and in the event that he does furnish such surety on said bond the premium therefor shall be a proper charge against the state and paid as other expenses of his office.

History: En. Sec. 2, Ch. 141, L. 1907;
re-en. Sec. 189, Rev. C. 1907; re-en. Sec.
188, R. C. M. 1921. Cal. Pol. C. Sec. 459.

59 C.J. States § 202.

Cross-References

Bond of state treasurer, sec. 6-101.

General fiscal duties, sec. 79-201 et seq.
Salary, sec. 25-501.

Liability of public officer or his bond
for loss of public funds due to insolvency
of bank in which they were deposited. 93
ALR 819.

Liability of sureties on official bonds for
profits realized by principal from use or
investment of public funds. 104 ALR
1402.

States[Ⓒ]48.

79-810. (189) Quarterly report of depositories. The president and cashier of every bank in which state funds are deposited shall, quarterly, make a full and complete verified statement of account showing the amount of money which has been on deposit with the bank which they represent during the quarter, and the amount of interest they have credited, allowed, or paid to the state treasurer on account of such deposit, and further, such affidavit shall contain a statement that no interest, consideration, or emolument, other than that prescribed by law, has been by such depository, or any of its officers, paid in to the state treasurer or to any other person as an inducement for the deposit or for continuing the same with such depository.

History: En. Sec. 3, Ch. 141, L. 1907;
re-en. Sec. 190, Rev. C. 1907; re-en. Sec.
189, R. C. M. 1921.

Depositories[Ⓒ]9.

26 C.J.S. Depositories § 12.

79-811. (190) Temporary suspension of treasurer. The state board of examiners, if, upon examination, find that the books of the state treasurer do not correspond with the amount of funds on hand, or do not show the actual condition of the funds, or if it appear to said board that any moneys belonging to the state have been embezzled, diverted, or in any manner taken from the treasury, without authority of law, or that the state treasurer has been guilty of negligence in keeping his books, or of taking care of the public moneys, must certify the fact to the governor, who, upon receipt of such certificate, must forthwith take possession of all books, moneys, papers, and other property belonging to the state which have come into the possession of such state treasurer, by virtue of his office or otherwise, and must temporarily suspend him from his office of state treasurer.

History: En. Sec. 450, Pol. C. 1895;
re-en. Sec. 191, Rev. C. 1907; re-en. Sec.
190, R. C. M. 1921.

States[Ⓒ]52.

59 C.J. States § 210.

79-812. (191) Appointment in place of suspended treasurer. The state board of examiners must thereupon procure the services of an expert to

examine the books, papers, and all matters connected with the office of the state treasurer so suspended, and if it appears to said board on such examination that such state treasurer has embezzled or converted to his own use the public moneys, or has been negligent in keeping his books, or in taking care of the public moneys, the governor, on the certificate of said board of that fact, must appoint another person to fill the place of such suspended state treasurer, and such person so appointed must execute an official bond and enter upon the office of state treasurer, as provided by law.

The governor must report all his acts done under this and the next preceding section to the next succeeding legislative assembly, and the state treasurer so appointed holds his office until the suspended state treasurer is restored or his successor is elected and qualified.

History: En. Sec. 451, Pol. C. 1895; States⁵¹.
re-en. Sec. 192, Rev. C. 1907; re-en. Sec. 59 C.J. States §§ 205, 208, 210.
191, R. C. M. 1921.

79-813. (197.1) Sale of property in escheated estates—disposal of proceeds. All stocks, bonds, securities, personal property, and effects now held or hereafter received by the state treasurer, and which belong to certain estates that have escheated to the state of Montana, shall be disposed of by the state treasurer at public auction at his office in the capitol. The state treasurer shall cause notice of such auction to be published in one (1) newspaper published in the city of Helena in two (2) issues during the period of two (2) weeks prior to such auction sale, stating the time and place of sale, and giving a list of all such stocks, bonds, securities, personal property and effects to be sold, reserving the right to reject any or all bids. The state treasurer shall credit the proceeds of such sale to the escheated estates fund, making proper accounting to the various estates of the amounts received.

History: En. Sec. 1, Ch. 58, L. 1931. Escheat⁸(1).
30 C.J.S. Escheat §§ 20, 21.

CHAPTER 9

EXPENDITURES BY STATE DEPARTMENTS IN EXCESS OF INCOME PROHIBITED

- Section 79-901. State officers and institutions—limit on expenditures.
79-902. Emergency expenditures in excess of appropriations, when allowed.
79-903. Decrease of expenditures on inspection of inventories.
79-904. Penalty for violation of act.

79-901. State officers and institutions—limit on expenditures. It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state, or for any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or in excess of such income as decreased by the state board of examiners, under and in accordance with the provisions of section 79-903, for such year, or for the state board of examiners, or any

supervisory board or authority either directly or indirectly to authorize, direct or order any such institution, officer, department, board, commission or bureau to increase any expenditures, except as hereinafter provided, and it shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income.

History: En. Sec. 1, Ch. 40, L. 1937.

Former Act Not Impliedly Repealed

This section has not impliedly repealed sec. 79-1011. It is designed to prevent deficiency appropriations, and makes no mention of reversion of appropriations, and therefore any unexpended balance of the appropriation made for the year ending March 1, 1938, for administrative or

other purposes of ch. 82 l. 1937, 71-201 et seq. creating the public welfare board, did not revert into the general fund but may be used for the succeeding year. State ex rel. Browning v. Brandjord, 106 M 395, 398, 81 P 2d 677.

States 131.

59 C.J. States § 384 et seq.

79-902. Emergency expenditures in excess of appropriations, when allowed. If it shall at any time appear to the state board of examiners that due to an unanticipated increase in the number of inmates or patients of any penal, custodial or charitable institution, or that due to any unforeseen and unanticipated emergency in the case of such institutions, or that due to any unforeseen and unanticipated emergency in the case of any other state institution, educational institution, department, board, commission or bureau, the amount appropriated for the maintenance and operation of any state institution, educational institution, department, board, commission or bureau, with all other income of the institution, if any, will be insufficient for such purposes during the year for which the appropriation was made, on written application to such state board of examiners, setting forth in detail the reasons therefor, said board of examiners, by an order made and entered at length, with such application, in its minutes, may authorize an expenditure to be made during such year for such purposes in such an amount in excess of such income for said year as said board of examiners may deem necessary and required, and the board, managerial staff or other authority in charge of any state institution, educational institution, department, board, commission or bureau, may expend such amount, and no more, for such purposes during such year; provided that any increase in expenditure so authorized for any penal, custodial or charitable institution due to increase in number of inmates or patients, shall not exceed the cost per inmate day as set forth in the last preceding legislative budget for each such institution. Said state board of examiners shall report to the next legislative assembly the amount expended or indebtedness or liability incurred under such authority granted by it and request that a deficiency appropriation bill be passed to take care of and pay the same.

History: En. Sec. 2, Ch. 40, L. 1937.

What Does Not Constitute "Unforeseen and Unanticipated" Emergency

Held, that this act is not an emergency expenditure measure delegating to the board appropriation powers, but one authorizing the officers in charge of such institutions to make the expenditures approved by the board without incurring the penal-

ties otherwise imposed by the act; held further, that where plaintiff alleged that the biennial appropriation for 1941 and 1942 for the Montana state hospital had proven insufficient by about \$100,000, the situation was not unforeseen since the financial condition of the hospital had been brought to the legislature's attention by a special committee report. Pampel v. State Board of Examiners, 114 M 380, 386, 136 P 2d 991.

Where Legislature Appropriates Less Than Asked for on Foreseen and Anticipated Expenditures

The provision of this section providing authorization of expenditures in excess of appropriations by state board of examiners because of "unforeseen and unanticipated emergency" does not apply in a case such as where the public welfare board's appro-

priation proves insufficient where the alleged emergency was not only not unforeseen and unanticipated but was called to the attention of the legislature as likely to arise when it submitted its budget and gave the reasons, and the legislature must have considered it but made a smaller appropriation. State ex rel. Dean v. Brandjord, 108 M 447, 452, 92 P 2d 273.

79-903. Decrease of expenditures on inspection of inventories. Prior to the beginning of each fiscal year the board of examiners must cause an inspection and inventory to be made of the stocks of supplies, materials, and articles on hand at or in or at the disposition of such institution, board, bureau, commission or department and said board must decrease the expenditures for the ensuing fiscal year by the amount or value of such supplies, materials, and articles so on hand or available, capable of utilization in such ensuing period and where further quantities thereof, or of substitutes therefor, will not be required, said decrease shall be effective upon the entry of order therefor on the minutes of the said board of examiners, and written notice thereof to the institution, department, bureau, board, commission, office, officer or employee affected by such order of said board; provided, that the aggregate inventoried value of such stocks of supplies, materials, and articles on hand at or in or at the disposition of any such institution, board, bureau, commission or department as of June 30, 1936, as shown by the records of the state purchasing agent, shall not be deducted from appropriations available for such institutions.

History: En. Sec. 3, Ch. 40, L. 1937.

States 75.

59 C.J. States § 149 et seq.

79-904. Penalty for violation of act. Any authority or member of a board of trustees or any person, officer or employee violating the provisions of section 79-901 or 79-902, shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) or imprisoned in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment; and in addition thereto, said authority, member, person, officer or employee, shall be personally liable, and the surety or sureties on his bond shall also be liable, to the state of Montana for the amount of the excess thus unlawfully expended, and said authority, member, person or officer shall be guilty of misfeasance in office, and such employee shall be guilty of wrong doing and each shall be subject to removal from office or from such employment, upon complaint of any taxpayer, filed in a district court of this state, and upon proof of violation of this act, in accordance with law.

History: En. Sec. 4, Ch. 40, L. 1937.

States 52, 81.

59 C.J. States §§ 209 et seq., 229 et seq.

CHAPTER 10

STATE BUDGET ACT

- Section 79-1001. Act to be cited, how.
 79-1002. Request for annual appropriation.
 79-1003. By whom request to be made.

- 79-1004. Blank forms for requests.
- 79-1005. Budget and budget bill.
- 79-1006. Legislative action.
- 79-1007. Right of officers to appear on consideration of budget.
- 79-1008. Requirements as to supplementary appropriations.
- 79-1009. General provisions governing budget—action on bills by legislature.
- 79-1010. Printing and distribution of budget.
- 79-1011. Disposal of unexpended appropriations.

79-1001. (294) Act to be cited, how. This act shall be known and may be cited as the "Budget Act."

History: En. Sec. 1, Ch. 205, L. 1919;
re-en. Sec. 294, R. C. M. 1921.

References

Veto Case, 69 M 325, 337, 222 P 428.

79-1002
Amended
L. '51, c. 194
Sec. 7, p. 444

79-1002. (295) Request for annual appropriation. Each department of the state government, and all state institutions and agencies requiring an annual appropriation from the state, shall present a request therefor to the state board of examiners, on or before the 1st day of November of each year preceding a regular session of the legislative assembly.

History: En. Sec. 2, Ch. 205, L. 1919;
re-en. Sec. 295, R. C. M. 1921; amd. Sec. 1,
Ch. 167, L. 1933.

States ~~131~~.

59 C.J. States § 380 et seq.

References

Veto Case, 69 M 325, 337, 222 P 428.

79-1003. (296) By whom request to be made. Such request shall be made by the head of such department, institution, or agency, and in the case of the judiciary, it shall be made by the clerk of the supreme court, under the direction of the chief justice of the supreme court.

History: En. Sec. 3, Ch. 205, L. 1919;
re-en. Sec. 296, R. C. M. 1921.

References

Veto Case, 69 M 325, 337, 222 P 428.

79-1004
Amended
L. '51, c. 194
Sec. 8, p. 444

79-1004. (297) Blank forms for requests. All requests for appropriations shall be made upon blank forms to be furnished by the state accountant upon approval of the state board of examiners. The blank forms shall be filled in according to the rules adopted by the state board of examiners. Upon receipt of the requests for appropriations, the state board of examiners shall proceed to examine such requests and reports, for the purpose of determining the necessity of the appropriations so requested.

History: En. Sec. 4, Ch. 205, L. 1919;
re-en. Sec. 297, R. C. M. 1921; amd. Sec. 2,
Ch. 167, L. 1933.

References

Veto Case, 69 M 325, 337, 222 P 428.

79-1005
Amended
L. '51, c. 194
Sec. 10, p. 445

79-1005. (298) Budget and budget bill. The legislative assembly shall not appropriate any money out of the state treasury except in accordance with the following provisions:

(a) Every appropriation bill shall be either a "Budget Bill" or a "Supplementary Appropriation Bill" as hereinafter mentioned.

(b) Budget. Within ten days after the convening of the state legislative assembly, the state board of examiners shall submit to the house of representatives and to the senate a budget which shall contain a statement showing:

1. The total revenues and expenditures of the state for the preceding biennial period, and the estimated revenues and expenditures for the succeeding biennial period.

2. The current assets and liabilities, reserves and surplus or deficit of the state.

3. All debts and the amount of all moneys in the state treasury to the credit of each fund.

4. All revenues, expenditures and balances for the preceding biennial period and the requests for the succeeding biennial period showing the amounts, item by item.

(c) The budget shall be divided into two parts and the first part shall be designated "Governmental Appropriations" and shall embrace an itemized estimate of the appropriations for each of the two ensuing fiscal years;

1. For the legislative assembly, showing the amounts necessary to pay the mileage and per diem of each member and per diem of all officers and attaches, and the several items for necessary incidental expenses;

2. For the executive department, as provided by law;

3. For the judiciary department, as certified to by the clerk of the supreme court, herein provided, and as provided by law;

4. To pay and discharge the principal and interest of any bonded indebtedness of the state of Montana;

5. For the salaries payable by the state under the constitution and laws of the state;

6. For the establishment and maintenance throughout the state of a thorough and efficient system of public schools, so far as the same may be necessary, in conformity with the constitution and laws of the state;

7. For such other purposes as are set forth in the constitution of the state.

(d) The second part of the budget shall be designated "General Appropriations" and shall include all other estimates and appropriations.

(e) Budget Bill. The board of examiners shall prepare its recommendations for the budget bill in the following manner:

1. The recommendations of the state board of examiners shall be in the form of a budget bill, showing the amounts recommended for all the proposed appropriations.

2. The recommendations of the state board of examiners shall designate the fund or funds from which each appropriation is proposed to be made.

3. The recommendations in the proposed budget bill may be itemized in such manner as the state board of examiners may deem necessary.

4. The proposed budget bill as hereinabove provided shall be submitted to the legislative assembly not later than the tenth day of the session.

History: En. Sec. 5, Ch. 205, L. 1919; amd. Sec. 1, Ch. 163, L. 1921; re-en. Sec. 298, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1933.

References

Veto Case, 69 M 325, 337, 222 P 428.

States 131.

59 C.J. States § 384 et seq.

79-1006. (299) Legislative action. The presiding officers of the house of representatives and of the senate shall promptly refer said budgets and budget bills to the proper committees. The budget bill for the maintenance of the several departments of the state government and the several state institutions shall be based upon the budget and proposed budget bill so submitted; and the legislative assembly may amend the proposed budget bill

by increasing or decreasing the items therein, except that the legislative assembly shall not amend the proposed budget bill so as to effect either the obligations of the state or the payment of any salaries required to be paid by the constitution and laws of the state.

History: En. Sec. 6, Ch. 205, L. 1919;
re-en. Sec. 299, R. C. M. 1921; amd. Sec. 4,
Ch. 167, L. 1933.

References

Veto Case, 69 M 325, 337, 222 P 428.

States \hookrightarrow 131.

59 C.J. States § 385 et seq.

79-1007. (300) Right of officers to appear on consideration of budget.

The state board of examiners and representatives of the executive departments, boards, officers, commissions, and institutions of the state, and other state agencies expending or applying for state moneys, shall have the right, and when requested by either the house of representatives or the senate, it shall be their duty to appear and to be heard with respect to any budget bill during the consideration thereof, and to answer inquiries relative thereto.

History: En. Sec. 7, Ch. 205, L. 1919;
re-en. Sec. 300, R. C. M. 1921.

References

Veto Case, 69 M 325, 337, 222 P 428.

79-1008. (301) Requirements as to supplementary appropriations.

Neither the house of representatives nor the senate shall consider any other appropriations until the budget bill has been finally acted upon by both houses, and no other appropriation shall be valid unless in accordance with the following provisions: (1) Every such appropriation bill shall be embodied in a separate bill, limited to some single work, object, or purpose, therein stated, and called a supplementary appropriation bill; (2) No supplementary appropriation bill shall become a law unless it is passed in each house by a two-thirds vote of all members and the ayes and nays recorded on its final passage.

History: En. Sec. 8, Ch. 205, L. 1919;
re-en. Sec. 301, R. C. M. 1921.

States \hookrightarrow 131.

59 C.J. States § 384 et seq.

References

Veto Case, 69 M 325, 337, 222 P 428.

79-1009
Repealed
L. 51, c. 194
Sec. 15, p. 448

79-1009. (302) General provisions governing budget—action on bills by legislature.

(1) If the general appropriation bill based upon the budgets shall not have been finally acted upon by both the house of representatives and the senate on or before the 30th day of the session of the legislative assembly, then such general appropriation bill shall be considered to the exclusion of all other bills until the same shall have been finally acted upon by both the house of representatives and the senate; (2) The state board of examiners, for the purpose of making up the budget bill, shall have the power, and it shall be its duty, to require from the proper state officials, including herein all executive departments, all executive and administrative officers, bureaus, boards, commissions, and agencies expending or supervising the expenditure of, and all institutions applying for state moneys and appropriations, such itemized statements and other information, in such form and at such times as the board shall direct; (3) Each member of the legislative assembly, upon introducing a supplementary appropriation bill, shall present to the clerk an extra copy of such bill, which shall

be transmitted to the state board of examiners which shall, within five days from the receipt thereof, return the same to the clerk, with recommendations and suggestions in connection with such appropriation to be transmitted to the committee to which the bill has been referred.

History: En. Sec. 9, Ch. 205, L. 1919; re-en. Sec. 302, R. C. M. 1921. **References** Veto Case, 69 M 325, 337, 222 P 428.

79-1010. (303) Printing and distribution of budget. The state board of examiners shall have printed before the tenth day of each session of the legislative assembly, the budgets provided for herein, and shall distribute copies of the same to the members of the legislative assembly, to all the state departments, institutions and agencies, and two copies to the library of congress at Washington.

History: En. Sec. 10, Ch. 205, L. 1919; re-en. Sec. 303, R. C. M. 1921; amd. Sec. 2, Ch. 46, L. 1937. **References** Veto Case, 69 M 325, 337, 222 P 428.

States[Ⓢ]131.
59 C.J. States §§ 123 et seq., 384 et seq.

79-1011. (304) Disposal of unexpended appropriations. All moneys now or hereafter appropriated for any specific purpose shall, after the expiration of the time for which so appropriated, be covered back into the several funds from which originally appropriated; provided, however, that any unexpended balance in any specific appropriation may be used for either of said years for which such appropriation has been made.

History: En. Sec. 2, H. B. 372, p. 16, L. 1895, not published in the codes; re-en. Sec. 304, R. C. M. 1921. of ch. 82 l. 1937, (71-201 et seq.) creating the public welfare board, did not revert into the general fund but may be used for the succeeding year. State ex rel. Brown- ing v. Brandjord, 106 M 395, 398, 81 P 2d 677.

Held Not Impliedly Repealed

This section has not been impliedly repealed by sec. 1, ch. 40, L. 1937 (79-901), designed to prevent deficiency appropriations, and which makes no mention of reversion of appropriations, and therefore any unexpended balance of the appropriation made for the year ending March 1, 1938, for administrative or other purposes

References
Veto Case, 69 M 325, 337, 222 P 428.

States[Ⓢ]132.
59 C.J. States § 382.

CHAPTER 11

PURCHASE OF STATE GENERAL FUND WARRANTS WITH LAND BOARD FUNDS—NOTICE TO BOARD OF BOND SALES

- Section 79-1101. Prior right to purchase general fund warrants reserved to state.
79-1102. Notice to land board of bond sales.
79-1103. Waiver of notice.
79-1104. Penalty.
79-1105. Redemption of bonds before maturity.

79-1101. (1912) Prior right to purchase general fund warrants reserved to state. The state of Montana does hereby reserve to itself a preference right, prior to the right of any person, company or corporation to purchase state general fund warrants hereafter issued with funds under the control of the state board of land commissioners and subject to investment.

Whenever the state board of land commissioners has under its control any funds subject to investment which in its judgment it would be advantageous to have invested in state general fund warrants, and there are

not sufficient funds in the state general fund to pay warrants issued against such fund at the time the same are issued and presented for payment, it shall authorize and direct the state treasurer to purchase state general fund warrants, designating the fund or funds to be so invested and fixing the amount or amounts. It shall also give notice to the state auditor of the investment to be made by the treasurer, designating the fund or funds to be invested and the amount or amounts. The auditor shall thereupon cause to be attached to, or stamped, written, or printed upon each general fund warrant thereafter issued, until warrants totaling the amount or amounts so designated have been issued, a notice to the effect that the state will exercise its preference right to purchase such warrant. The state treasurer shall thereafter when such warrant is presented to him, pay the same out of the proper fund as designated by the board and the warrant so purchased shall be registered as other state warrants and bear interest as provided by law.

When the designated amounts have been invested, the state treasurer shall notify the secretary of the state board of land commissioners, who shall thereupon issue orders upon the proper funds addressed to the state auditor for warrants to be issued in favor of the treasurer.

History: En. Sec. 89, Ch. 147, L. 1909; States 124.
re-en. Sec. 1912, R. C. M. 1921; amd. Sec. 59 C.J. States § 374 et seq.
1, Ch. 15, L. 1927.

79-1102. (1913) Notice to land board of bond sales. All officers in charge of county, city, school district and irrigation district bond sales shall, at least twenty days prior to the date of such sales, furnish to the state board of land commissioners a copy of the advertisement of such bond sale, and shall thereafter furnish any further information concerning said sale which may be requested by said board.

History: En. Sec. 1, Ch. 78, L. 1921;
re-en. Sec. 1913, R. C. M. 1921.

NOTE.—Prior acts were section 2199, revised codes 1907. Repealed, by implication, by chapter 147, laws of 1909, the attempted amendment by chapter 25, laws of 1913, being therefore void.

Counties 183(1); Municipal Corporations 929; Schools and School Districts 97(6); Waters and Water Courses 230(4).

20 C.J.S. Counties § 269; 44 C.J. Municipal Corporations § 4186 et seq.; 56 C.J. Schools and School Districts § 744; 67 C.J. Waters § 914.

79-1103. (1914) Waiver of notice. In lieu of compliance with the provisions of section 79-1102 the officers therein named may, at any time prior to the date of any such bond sale, obtain from the state board of land commissioners a written waiver of compliance with the provisions of said section.

History: En. Sec. 2, Ch. 78, L. 1921;
re-en. Sec. 1914, R. C. M. 1921.

79-1104. (1915) Penalty. A failure to comply with the provisions of this act by any officers charged with said duties shall constitute a misdemeanor and be punishable as such.

History: En. Sec. 3, Ch. 78, L. 1921;
re-en. Sec. 1915, R. C. M. 1921.

79-1105. (1916) Redemption of bonds before maturity. The state board of land commissioners and the officers acting for or under this board shall permit any school district, town, city or county to pay and redeem one or

more of its bonds held by the state for the credit of any fund under the investment administration of the said board at any time before maturity; but in calculating the unpaid interest accrued on any such bond or bonds at the time of such payment and redemption, interest for a fractional month shall be calculated and collected for a full month.

Payment and redemption of such bonds shall be made at the office of the state treasurer unless the bonds by their own terms and provisions are made payable at some other place and payment at his office would be disadvantageous to the redemptioner. When such bonds have been so paid and redeemed, the state treasurer shall effectually cancel the bonds and the attached coupons by perforation or otherwise and mail to the proper treasurer together with his receipt.

This section shall not be so construed, however, as to authorize or permit any school district, town, city or county to issue refunding bonds for the purpose of paying and redeeming any bond or bonds held by the state before the optional or redeemable date therein stated, nor to grant the right to pay any such bond or bonds held by the state before the optional or redeemable date from the proceeds of refunding bonds, except as provided in section 75-3907.

History: En. Sec. 2, Ch. 33, L. 1907; re-en. Sec. 2202, Rev. C. 1907; amd. Sec. 91, Ch. 147, L. 1909; re-en. Sec. 1916, R. C. M. 1921; amd. Sec. 1, Ch. 70, L. 1925; amd. Sec. 1, Ch. 3, L. 1929.

953; Schools and School Districts 97(9); Waters and Water Courses 230 (6).

20 C.J.S. Counties § 276; 44 C.J. Municipal Corporations § 4220; Schools and School Districts § 747; 67 C.J. Waters § 919.

Counties 187; Municipal Corporations

CHAPTER 12

MONTANA TRUST AND LEGACY FUND—UNIFIED INVESTMENT PLAN

- Section 79-1201. Unified investment plan for investment of Montana trust and legacy fund.
 79-1202. Funds to be invested according to unified plan.
 79-1203. Departments may request investment of funds according to unified investment plan.
 79-1204. Transfer of investments of permanent funds.
 79-1205. Transfer of investments of department funds.
 79-1206. Investment of funds—supreme court supervision—duty of land commissioners.
 79-1207. Sale and transfer of securities—power of land board concerning.
 79-1208. Treasurer's account of funds—auditor's account.
 79-1209. Compensation of state for administering funds.
 79-1210. Transfer of accrued interest.
 79-1211. Annual transfer of interest collected.
 79-1212. Payments from Montana trust and legacy fund.
 79-1213. Payments made on order of board—annual statement of treasurer.
 79-1214. Limitation on payments from funds.
 79-1215. Records of treasurer—publicity to contributors given by legislature.
 79-1216. Reports of state treasurer concerning funds.

79-1201. (5668.19) Unified investment plan for investment of Montana trust and legacy fund. This section shall be regarded as a general explanation of the main features of the act. The term Unified Investment Plan as used in this act shall denote the investment and administration by the state board of land commissioners of the various funds which it is authorized to invest and administer under the provisions of this act, and under the provisions of article XXI of the constitution of the state, as one common

fund to be known and designated as the Montana trust and legacy fund, as hereinafter in this act more specifically provided. Under this plan all securities purchased and all cash on hand will belong jointly to the funds invested; they will share the interest collected on the same basis, and losses if any will automatically distribute themselves pro-rata over all the funds; but each fund will maintain its separate existence; all receipts for each fund including its share of the interest collected will be added to that fund, and every payment made will be deducted from the proper fund.

History: En. Sec. 1, Ch. 70, L. 1929.

Operation and Effect

Held, that the claim that by reason of the provision of the state insurance act requiring fund thereunder collected to be invested in Montana trust and legacy fund secs. 79-1201 to 79-1216 inclusive subject to limitations of art. XXI of

constitution, the credit of contributing counties and school districts is donated or loaned in violation of sec. 1, art. XIII of constitution cannot be maintained. State v. Holmes, 100 M 256, 289, 47 P 2d 624.

States 124.

59 C.J. States § 374 et seq.

79-1202. (5668.20) Funds to be invested according to unified plan. The state board of land commissioners is hereby authorized and required to invest according to this plan under the provisions of this act the following funds: The escheated estates fund, meaning all of the various sums paid over to the state treasurer from estates escheated or escheating to the state which have not been transferred to the public school permanent fund; all funds arising from any donation, gift, grant, bequest or devise for the support, maintenance or benefit of any institution of learning or any institution supported in whole or in part by the state of Montana and not intended for immediate use but subject to long term investment and not legally in the custody of any lawfully constituted board, unless some other investment agency has been designated by the donor or by statute; all funds which become parts of the Montana trust and legacy fund under the provisions of article XXI of the constitution; and all other public funds of the state subject to long-term investment not legally in the custody of any lawfully constituted board. No fund arising mainly from federal land grants made to the state of Montana shall be invested or administered under this plan.

History: En. Sec. 2, Ch. 70, L. 1929.

79-1203. (5668.21) Departments may request investment of funds according to unified investment plan. Any department of the government of the state of Montana, state board, commission, bureau, institution, office or officer, which has under its or his administration any fund subject to investment, is hereby granted the right, upon making request therefor, to have such fund or any part thereof invested by the state board of land commissioners according to this plan under the provisions of this act. The said board is hereby authorized and required to invest and administer the fund or part of fund for which such request has been made.

History: En. Sec. 3, Ch. 70, L. 1929.

79-1204. (5668.22) Transfer of investments of permanent funds. Investments belonging to the funds designated in section 79-1202 shall be transferred to the account of the Montana trust and legacy fund as of July 1, 1929.

History: En. Sec. 4, Ch. 70, L. 1929.

States 127.

59 C.J. States § 378.

79-1205. (5668.23) Transfer of investments of department funds. Investments belonging to any of the funds embraced under the provisions of section 79-1203 of which the state board of land commissioners has assumed the investment administration, shall be transferred to the account of the Montana trust and legacy fund upon request for such transfer made by the officer or authority having charge of such fund, if in the judgment of the board such securities in every way constitute safe and satisfactory investments for the Montana trust and legacy fund.

History: En. Sec. 5, Ch. 70, L. 1929.

79-1206. (5668.24) Investment of funds—supreme court supervision—duty of land commissioners. All funds invested according to the unified investment plan shall be invested as one common fund to be known and designated as the Montana trust and legacy fund as provided in article XXI of the constitution, and shall be invested in the same kinds of securities as the constitution and the statutes prescribe for the investment of the other funds under the administration of the state board of land commissioners, and also subject to the special limitations of the said article XXI. The entire investment administration of all these funds shall be subject to the supervision of the justices of the supreme court as provided in section 17 of the said article. The commissioner of state lands and investments shall perform the same duties and exercise the same powers with regard to the investment administration of the funds under the unified investment plan as he performs with regard to the other investments made by the state board of land commissioners.

History: En. Sec. 6, Ch. 70, L. 1929.

79-1207. (5668.25) Sale and transfer of securities—power of land board concerning. The state board of land commissioners is hereby specifically granted the power and authority to sell and transfer at their full and true value any securities belonging to the Montana trust and legacy fund to any other fund under its control or to investors, when it finds such sale and transfer necessary to raise money for payments due from the said fund.

History: En. Sec. 7, Ch. 70, L. 1929.

79-1208. (5668.26) Treasurer's account of funds—auditor's account. The state treasurer shall keep a separate account to be designated by name and number for each and every fund which is invested and administered as part of the Montana trust and legacy fund and shall also keep an account of the total of such fund and of all the investments belonging to such fund. Every receipt and collection for each and every fund shall when received be added to the particular fund to which it belongs, and every payment made shall be deducted from the proper fund. The state auditor shall in all cases keep accounts corresponding to those required to be kept by the state treasurer under the provisions of this act.

History: En. Sec. 8, Ch. 70, L. 1929.

79-1209. (5668.27) Compensation of state for administering funds. The state shall be entitled to receive as compensation for the administration of all the funds administered under this act one-twentieth (1/20) of all the

interest collected thereon each year, less the losses, if any, ascertained during the same year. (See section 11 of article XXI, constitution.)

History: En. Sec. 9, Ch. 70, L. 1929.

79-1210. (5668.28) Transfer of accrued interest. On December 31, 1929, the state treasurer shall transfer from the total interest receipts for the Montana trust and legacy fund up to that date all interest accrued but unpaid on July 1, 1929, on all securities taken over by the state board of land commissioners, and add such accrued interest to the individual funds to which it belongs. From the balance of the interest collected up to December 31, the state treasurer shall transfer to the state general fund one-twentieth (1/20) less all the losses, if any, on the investments ascertained up to that time.

The balance of the interest collected shall be added pro rata to each and every fund constituting the Montana trust and legacy fund, which was part of that fund on July 1, 1929, and still remains a part thereof, based on the total thereof on that date, and shall be added to each such fund, or held available for payment, according to the provisions of the statutes and other valid provisions applicable thereto.

History: En. Sec. 10, Ch. 70, L. 1929.

79-1211. (5668.29) Annual transfer of interest collected. On the last day of December, 1930, and on the last day of December each year thereafter, the state treasurer shall transfer to the state general fund one-twentieth (1/20) of all the interest collected during that year, less all the losses ascertained during that year, if any, which losses shall be deducted from the one-twentieth (1/20) constituting the compensation of the state. The balance of the interest collected shall be credited pro rata to each and every fund then constituting the Montana trust and legacy fund that was in the keeping of the state on January 1, of that year, based on the total thereof on that date, and shall be added to each such fund, or held available for payment, according to the provisions of section 11 of article XXI of the constitution and of the statutes and other valid provisions applicable thereto. If any fund is larger or smaller on December 31, than on January 1 of the same year, then the average of the amounts on these two dates shall be the basis for calculating the interest to be credited to that fund.

History: En. Sec. 11, Ch. 70, L. 1929.

79-1212. (5668.30) Payments from Montana trust and legacy fund. The principal, and any part thereof, of each and every fund constituting the Montana trust and legacy fund shall be subject to payment at any time when due under the constitutional and statutory provisions applicable thereto and according to the provisions of the gift, donation, grant, legacy, bequest, or devise through or from which the particular fund arises. Both payments of interest earnings and payments of principal shall be made upon warrants duly issued by the state auditor under orders received by him from the authorities having the legal control of the use of the various funds.

History: En. Sec. 12, Ch. 70, L. 1929.

79-1213. (5668.31) Payments made on order of board—annual statement of treasurer. Whenever any payment is required to be made of interest or principal from any endowment fund or other fund administered as part of

the Montana trust and legacy fund, which payment is not subject to the order of any department of the government of the state, state board, commission, bureau, institution, office or officer, other than the state board of land commissioners, the state treasurer shall send a statement in duplicate to such board of the payment or payments to be made showing all essential facts relating thereto. The board shall then issue orders upon the state auditor to issue warrants for all payments approved by it.

During January of each year, the state treasurer shall submit to the board a statement covering all such interest payments to be made for the preceding year and all such payments from principal to be made at that time giving all necessary information relating thereto. The board shall then issue orders upon the state auditor to issue warrants for all payments approved by it.

History: En. Sec. 13, Ch. 70, L. 1929.

79-1214. (5668.32) Limitation on payments from funds. No order or warrant shall ever be issued upon the Montana trust and legacy fund for a larger amount than the sum total of the particular fund to which it applies, and if such order or warrant is issued, the state treasurer shall refuse to pay the same and shall be personally liable under his official bond for the entire overdraft resulting from such payment if made.

History: En. Sec. 14, Ch. 70, L. 1929.

States 80(1), 124.
59 C.J. States §§ 236 et seq., 374 et seq.

79-1215. (5668.33) Records of treasurer—publicity to contributors given by legislature. The state treasurer shall keep in a book provided for that purpose, a permanent record of all gifts, donations, grants, legacies, bequests, devises and other contributions administered by the state board of land commissioners under article XXI of the constitution and acts and parts of acts carrying this part of the constitution into effect. This record shall show the names of the givers, the purposes of the contributions and all essential facts relating thereto. A duplicate of this record shall be kept by the secretary of state. These records shall be preserved perpetually as a lasting memorial to the givers and their interest in society. The legislative assembly shall from time to time make provisions for suitable publicity concerning these benefactors of their fellowmen.

History: En. Sec. 15, Ch. 70, L. 1929.

States 73.
59 C.J. States § 143.

79-1216. (5668.34) Reports of state treasurer concerning funds. The state treasurer shall from time to time make such reports relating to the affairs of the Montana trust and legacy fund as the state board of land commissioners may call for.

History: En. Sec. 16, Ch. 70, L. 1929.

CHAPTER 13

POST WAR PLANNING AND CONSTRUCTION RESERVE FUND

- Section 79-1301. Creation of post war planning and construction reserve fund and commission.
79-1302. Authority to invest.
79-1303. Use for which fund held.

- 79-1304. Post war planning and construction commission created—personnel—appointment.
- 79-1305. Studies, plans and surveys—termination of war emergency.
- 79-1306. Liaison with other agencies.
- 79-1307. Acceptance of grants—plans and specifications.
- 79-1308. Appropriation to fund.

79-1301. Creation of post war planning and construction reserve fund and commission. There is hereby established a fund to be known as the "post war planning and construction reserve fund", which shall consist of moneys appropriated, transferred or credited thereto by this act or by any other law.

History: En. Sec. 1, Ch. 148, L. 1945.

79-1302. Authority to invest. This fund shall be kept entirely separate and apart from all other funds of the state of Montana. The commission as provided for herein shall have the sole power and authority to invest all moneys of the fund in such securities as are legal for the investment of funds of the state of Montana. The interest and income from the investment of the fund shall be a part of the fund.

History: En. Sec. 2, Ch. 148, L. 1945.

79-1303. Use for which fund held. The said fund shall be held for such post war use as shall hereafter be directed by the legislative assembly of the state of Montana, and no other use whatsoever shall be made except as hereinafter provided, and is to be used under such direction of the legislative assembly for the purpose of defraying or financing all or part of the cost of a long range post war program of public improvements and betterments for execution by the state or any of its agencies, including capital acquisition, replacements, additions, improvements, construction, reconstruction, deferred maintenance, developmental services, water conservation and such other purposes as may be authorized by the legislative assembly.

History: En. Sec. 3, Ch. 148, L. 1945.

79-1304. Post war planning and construction commission created—personnel—appointment. There is hereby created a commission to be known as the "post war planning and construction commission" which shall consist of eleven members. The governor shall be a member of the commission and shall be the chairman and four members shall be appointed by the governor; three members of the house of representatives to be appointed by the speaker and three members of the senate to be appointed by the president upon the advice and consent of the committee on committees of the senate shall be ex officio members of the commission, with right to vote.

The commission may appoint and employ a secretary and such other employees as are necessary to carry out the purpose and intent of this act.

History: En. Sec. 4, Ch. 148, L. 1945.

79-1305. Studies, plans and surveys—termination of war emergency. The commission is hereby directed and authorized to make studies, plans and surveys for needed and necessary post war construction, improvements and development in and about all institutions and buildings of every kind and character owned or operated by the state of Montana, and water conservation projects, including but not limited to educational, penal, correctional, administrative and custodial institutions, to the end that the design, plans

and specifications, surveys and advisability of construction, together with the scope, cost, employment possibilities, materials and equipment needed for such projects following the termination of the war, will be readily available.

The date of the termination of the war shall be the date proclaimed by the president as the termination of the existing war emergency or the date specified in a concurrent resolution of the two houses of congress as the date of such termination, or following the date on which the congress by a concurrent resolution of the two houses finds as a fact that the war emergency has been relieved to an extent that will justify construction, water conservation, improvements and developments as provided for herein.

History: En. Sec. 5, Ch. 148, L. 1945.

79-1306. Liaison with other agencies. The commission is hereby authorized to maintain liaison with federal, state and local officials and agencies having duties and responsibilities related to post war planning.

History: En. Sec. 6, Ch. 148, L. 1945.

79-1307. Acceptance of grants—plans and specifications. (a) The commission is hereby authorized to accept any grant of funds made by the United States or any department or agency thereof for the purpose of assisting it in the carrying out of any of its functions.

(b) When the commission has completed studies of a long range post war building, water conservation and construction program as provided herein, it shall submit such studies to the board of examiners who shall thereupon employ architects, engineers and such other personnel as may be necessary to prepare plans and specifications therefor and such architects and engineers and other personnel so employed shall be paid therefor from the appropriation for that purpose herein provided. Such plans and specifications shall upon their completion be submitted to the commission for its approval.

(c) The members of the commission shall receive no compensation for their services but shall be reimbursed for the expenses necessarily incurred by them in the performance of their duties.

(d) The commission may request and shall receive from any agency or political subdivision of the state such assistance and data as will enable it to carry out its duties.

(e) The commission is hereby granted the sole power of investment of the fund herein provided for.

(f) The commission shall report to the governor and to the legislative assembly its acts, findings and proceedings as contemplated herein.

History: En. Sec. 7, Ch. 148, L. 1945.

79-1308. Appropriation to fund. There is hereby appropriated to the "post war planning and construction reserve fund" provided for herein, the sum of four and one-half million dollars from any moneys in the state treasury not otherwise appropriated, and the state treasurer is hereby instructed to transfer such amount from the state general fund to the post war planning and construction reserve fund of which appropriation the sum of ten thousand dollars (\$10,000.00) shall be and it is hereby made available for administrative expenses, and the further sum of not to exceed two hundred fifty thousand dollars (\$250,000.00) shall be and it is hereby made available for

architectural and engineering costs as contemplated in section 79-1307 (b) above. Such moneys shall be payable on audit and warrant in the same manner as other funds of the state of Montana.

History: En. Sec. 8, Ch. 148, L. 1945.

CHAPTER 14

INTEREST AND INCOME FUND OF STATE EDUCATIONAL INSTITUTIONS —BIENNIAL STATEMENTS

- Section 79-1401. Monthly deposit of moneys received from permanent funds of state educational institutions.
 79-1402. Disbursement of said funds.
 79-1403. Income and interest fund to be first exhausted in payment of claims.
 79-1404. Quarterly statement of expenses incurred and disbursements made on account of federal funds.
 79-1405. Biennial statement of receipts and expenditures of state educational institutions.

79-1401. (1922) Monthly deposit of moneys received from permanent funds of state educational institutions. All moneys received from the investment of the permanent funds of the university of Montana, the agricultural college of Montana, school of mines of Montana, state normal school of Montana, state reform school of Montana, and deaf and dumb school of Montana, and all money received from the leasing of lands granted to said institutions, shall, at the close of each calendar month, be deposited with the state treasurer of Montana for each of such institutions, to the credit of what shall be known and designated as the "interest and income fund" of each of said institutions.

History: En. Sec. 1, Ch. 120, L. 1909; States[Ⓢ]124.
 re-en. Sec. 1922, R. C. M. 1921. 59 C.J. States § 374 et seq.

79-1402. (1923) Disbursement of said funds. The money received by the state treasurer under the provisions of the preceding section shall be paid out by him only on warrant issued by the state auditor in payment of claims for expenses actually incurred for the support and maintenance of the institution filing the same, and the state auditor shall not draw warrants on said interest and income funds for any such claims until after the claim has been duly filed with and audited and approved by the state board of examiners.

History: En. Sec. 2, Ch. 120, L. 1909; States[Ⓢ]123.
 re-en. Sec. 1923, R. C. M. 1921. 59 C.J. States § 376 et seq.

79-1403. (1924) Income and interest fund to be first exhausted in payment of claims. In the payment of claims presented by any of the institutions named in section 79-1401, the interest and income funds mentioned in said section, so far as available for the payment of the items set out in said claim, shall be exhausted before any warrants shall be drawn against the appropriation made by the state out of the general fund for the maintenance of the institution filing the claim.

History: En. Sec. 3, Ch. 120, L. 1909; References
 re-en. Sec. 1924, R. C. M. 1921. Anderson v. Mace et al., 99 M 421, 45 P 2d 771.

79-1404. (1925) Quarterly statement of expenses incurred and disbursements made on account of federal funds. On the first of March, first

of June, first of September, and first of December of each year, the executive board of each of the institutions named in section 79-1401 shall prepare or cause to be prepared a detailed statement, showing all the expenses incurred and all disbursements made by such institution during the preceding quarter, and the purposes for which the same were made, out of funds, if any, appropriated by the United States government for the maintenance and support of any such institutions. Such report shall be signed and verified under oath by the president of the executive board and treasurer of the institution making the same, and shall be filed with the state board of examiners.

History: En. Sec. 4, Ch. 120, L. 1909;
re-en. Sec. 1925, R. C. M. 1921.

14 C.J.S. Colleges and Universities § 10;
50 C.J. Prisons § 33 et seq.; 59 C.J. States
§ 273.

Colleges and Universities 6(1); Pris-
ons 12; States 82.

79-1405. (1926) Biennial statement of receipts and expenditures of state educational institutions. The executive board of each of the institutions named in section 79-1401 shall, at the end of November of each even-numbered year, beginning with November 30, 1910, prepare or cause to be prepared a full detailed statement, showing all moneys, if any, received by such institution from the United States government, and of the moneys received from the investment of the permanent school funds of the institutions, and of moneys received from the leasing of lands granted to such institutions, and all money appropriated by the state of Montana out of the general fund for such institution, and all money received from tuitions or any other sources whatever during the two years preceding the thirtieth day of November.

Such report shall also show all disbursements made out of the funds received from each of the sources mentioned above in this section, and the purposes for which each disbursement was made during such two years. Said reports shall also contain a statement showing the amount of money, if any, that will be received from the United States government for the maintenance and support of the institution for the next ensuing two years, and also an estimate of the amounts of money that will be received for the maintenance of institution from the investment of the permanent fund thereof, and from the leasing of lands granted to the institution for the next ensuing two years. Said reports shall be signed and verified under oath by the president of the executive board and treasurer of the institution, and filed with the governor of the state of Montana within ten days from and after November thirtieth of each even-numbered year.

History: En. Sec. 5, Ch. 120, L. 1909;
re-en. Sec. 1926, R. C. M. 1921.

CHAPTER 15

PAYMENT OF INTEREST ON LAND GRANT WARRANTS—DISPOSAL OF FINES—VENUE OF ACTIONS—VIOLATING 1909 LAND ACT A FELONY

- Section 79-1501. Payment of interest—land grant warrants.
79-1502. Disposal of fines.
79-1503. Suits, where triable.
79-1504. Violation of 1909 land act a felony—penalty.

79-1501. (1917) Payment of interest—land grant warrants. The interest on all land grant warrants shall be payable on the first day of July next succeeding the date of issue, and annually thereafter. Whenever there is sufficient money in any of the land grant funds to pay outstanding warrants, or interest thereon, the treasurer shall cause to be published a brief notice that said warrants, or the interest on particular warrants on which interest would be payable on July first, describing them by numbers and names of funds, will be forthwith payable; and on the presentation of any such warrants, on, or at any time after July first, the treasurer shall pay the interest thereon, indorsing the date of payment and amount paid of each warrant, returning the same to the holder; and he shall keep a register showing the dates and amounts of each interest payment on each warrant, in each fund; and if any warrants are called for payment, interest thereon shall cease on the date fixed in said notice.

History: En. Sec. 3512, Pol. C. 1895; States 142.
re-en. Sec. 2204, Rev. C. 1907; amd. Sec. 59 C.J. States § 408.
92, Ch. 147, L. 1909; re-en. Sec. 1917, R. C. M. 1921.

79-1502. (1919) Disposal of fines. All moneys received as fines, fees, and forfeitures under this act, or as penalties for the violation of any of the land laws of this state, or as fees, fines or forfeitures under any amendments of this act, shall be paid to the state treasurer, and by him deposited to the credit of the general fund.

History: En. Sec. 104, Ch. 147, L. 1909; Fines 20; Forfeitures 10; States 126.
amd. Sec. 1, Ch. 99, L. 1917; amd. Sec. 1, 36 C.J.S. Fines § 19; 37 C.J.S. Forfeitures §§ 8, 9; 59 C.J. States § 378.
Ch. 171, L. 1919; amd. Sec. 1, Ch. 103, L. 1921; re-en. Sec. 1919, R. C. M. 1921.

79-1503. (1921) Suits, where triable. All actions for the recovery of money due under this act, or for the cancellation of leases, or for the cancellation of certificates of purchase or patents, or for the recovery of state lands, actions of forcible entry and detainer, actions for ejectment, and all other actions affecting any state lands, shall be controlled, as to venue, by the provisions of the code of civil procedure relating to the place of trial of civil actions; and shall be conducted by the attorney general.

History: En. Sec. 100, Ch. 147, L. 1909; Venue 2 et seq.
re-en. Sec. 1921, R. C. M. 1921. 67 C.J. Venue § 27 et seq.

79-1504. (1927) Violation of 1909 land act a felony—penalty. Any officer or employee of the state of Montana guilty of a violation of any of the provisions of this act and not herein otherwise provided for is hereby declared guilty of a felony, and shall be punished by imprisonment in the state prison for a term not exceeding ten years, or by a fine not exceeding five thousand dollars, or by both fine and imprisonment.

History: En. Sec. 106, Ch. 147, L. 1909; States 81.
re-en. Sec. 1927, R. C. M. 1921. 59 C.J. States § 229 et seq.

CHAPTER 16

INDIAN WELFARE FUNDS—ADMINISTRATION

Section 79-1601. State departments and bureaus authorized to administer federal funds for welfare of Indians.

79-1602. Board of health—board of education—bureau of child and animal protection—administration of federal funds for Indians.

79-1603. Budgets—accounting to federal disbursing and auditing officers—duty of state departments and bureaus.

79-1601. (5668.14) State departments and bureaus authorized to administer federal funds for welfare of Indians. If and whenever the congress of the United States shall authorize the administration of federal appropriations for the welfare of the Indians of Montana through the agency of public departments and bureaus of this state, full power and authority is conferred upon such state agencies to administer the expenditure of such federal appropriations for the welfare of such Indians within the scope of the powers conferred upon such departments by law.

History: En. Sec. 1, Ch. 65, L. 1927. Indians \Rightarrow 7.
42 C.J.S. Indians § 22.

79-1602. (5668.15) Board of health—board of education—bureau of child and animal protection—administration of federal funds for Indians. In furtherance of this authorization, the state board of health is hereby authorized, empowered and directed to administer the expenditure of all such federal appropriations as may be made for the care and hospitalization of and for medical attention to sick or injured Indians, and for the control and prevention of communicable and infectious diseases, and general sanitation among the Indians of Montana. The state board of education is authorized, empowered and directed to administer the expenditure of such federal appropriations as may be made for the construction and maintenance of schools and the education of the Montana Indians. The state bureau of child and animal protection is authorized, empowered and directed to administer the expenditure of such federal appropriations as may be made for the relief of aged, infirm, and indigent Indians throughout the state of Montana. Subject to such limitations as the congress of the United States or the secretary of the interior may lawfully impose upon the administration of such funds, the several state departments above mentioned are authorized to expend the same for the purposes within their respective jurisdictions which in the opinion of the respective heads of said departments will best conserve the interests and welfare of all the Indians residing within the state of Montana.

History: En. Sec. 2, Ch. 65, L. 1927.

79-1603. (5668.16) Budgets—accounting to federal disbursing and auditing officers—duty of state departments and bureaus. If the congress of the United States shall require the submission of budgets to the secretary of the interior or any other federal agency before authorizing the expenditure of federal funds, such state agencies are hereby authorized to prepare budgets showing the amounts necessary during each year to carry out the purposes for which such federal appropriations may be made, and shall submit such budgets when prepared to the state board of control who shall coordinate the same so far as possible and approve them before they are forwarded to the federal agency charged with receiving them by congress. Thereafter said state agencies shall account directly to the federal disbursing and auditing officers and employees of each of said departments

shall be responsible upon their official bonds to such federal disbursing and auditing officers for a proper accounting for all funds so disbursed.

History: En. Sec. 3, Ch. 65, L. 1927.

CHAPTER 17

BONDS OF STATE AND TAXING UNITS—AMORTIZATION PREFERRED —FISCAL AGENCIES FOR PAYMENT

Tit. 79, c. 17 "The 1951 Bond Validating Act" L. '51, c. 18 Secs. 1-5 pp. 23-25	Section	79-1701.	Amortization bonds preferred on bonding of state or taxing districts.
		79-1702.	Amortization bonds and serial bonds defined.
		79-1703.	Matters to be considered on bids for bonds—interest.
		79-1704.	Statement of preference of amortization bonds to be included in notice of sale.
		79-1705.	Copy of notice of sale to be sent register of state lands.
		79-1706.	Governor to designate fiscal agencies for bonds.
		79-1707.	Bond required of fiscal agencies.
		79-1708.	Redemption money may be deposited with fiscal agencies.
		79-1709.	Cancellation of bonds and coupons on receipt of redemption moneys by fiscal agencies.
		79-1710.	Auditor to be notified by bonding districts of fiscal agents—auditor to advise governor—notice of place of payment.
		79-1711.	Bonding district not responsible for funds remitted to fiscal agents.
		79-1712.	Liability of treasurer neglecting to perform duty under act.
		79-1713.	Change of fiscal agency by governor—notice.

79-1701. (5668.1) Amortization bonds preferred on bonding of state or taxing districts. Whenever the state of Montana, or any county, city, town, school district, or any other taxing unit in the state of Montana having the power to issue and negotiate bonds, does hereafter issue its bonds, such bonds shall be payable on the amortization plan if bonds in this form can be sold and disposed of at a reasonable rate of interest. If amortization bonds can not be negotiated at such reasonable rate of interest, advantageous to the people for whose benefit the same are issued, then in such case, serial bonds may be issued in place of amortization bonds.

History: En. Sec. 1, Ch. 38, L. 1923.

Operation and Effect

Cross-References

Attorney general to give opinion as to validity of bonds, secs. 82-410 to 82-413.

Bridge bonds, sec. 32-709.

Cities and towns, bonds, secs. 11-966, 11-2301 et seq.

County bonds, sec. 16-2001 et seq.

Drainage district bonds, sec. 89-2501.

Highway bonds, sec. 32-202.

Housing authority bonds, secs. 35-114, 35-116.

Irrigation district bonds, secs. 89-1703 to 89-1708.

Laboratory building bonds, sec. 78-601 et seq.

Limitation of actions testing validity of bonds, sec. 82-412.

Local improvement districts, highways, secs. 32-501 to 32-527.

School bonds, sec. 75-3901 et seq.

Held, that this section providing that the state, municipal corporations or districts in issuing bonds shall give preference to amortization bonds and accept serial bonds only when the former cannot be negotiated to good advantage, is inapplicable to the issuance of irrigation district bonds, and that the provisions of the irrigation law (89-1703—89-1705 and 89-1707), dealing with the subject specially, are controlling. *Walden v. Bitter Root Irr. Dist.*, 68 M 281, 292, 217 P 646.

Held, that this section, declaring that when the state or a subdivision thereof issues bonds they shall be made payable on the amortization plan unless they cannot be negotiated at a reasonable rate of interest in which event serial bonds may be issued in their place, is not retroactive. *Educational Bonds Case*, 68 M 526, 527 et seq., 219 P 637.

79-1702. (5668.2) Amortization bonds and serial bonds defined. 1. The term "amortization bonds" is hereby defined as meaning that kind of bonds on which part of the principal is required to be paid each time interest

becomes due and payable, which part payment on the principal increases at each succeeding installment in the same amount that interest payment decreases, so that the combined amount due on principal and interest on each succeeding due date remains the same until the bond is paid in full.

2. The term "serial bonds" is hereby defined as meaning that form of bonds under which one or more individual bonds become due and must be paid at regular intervals during the term for which the bonds were issued, so that the last bond will be taken up and paid at the expiration of the term for which the bonds were issued.

History: En. Sec. 2, Ch. 38, L. 1923.

79-1703. (5668.3) Matters to be considered on bids for bonds—interest. In considering bids for various classes of bonds, the board or officers negotiating the same, shall take into account not only the rate of interest offered or demanded on the various classes, but also what rate of interest can be realized on such sinking funds as may be required for the payment of serial bonds, and also every other known element affecting the total cost of the bond when paid in full. That kind of bond shall be issued which in the totality of its effect is the most advantageous to the borrower. Provided, however, that this act shall not be so construed as to authorize a higher rate of interest on any kind or class of bond than six percentum per annum.

History: En. Sec. 3, Ch. 38, L. 1923.

79-1704. (5668.4) Statement of preference of amortization bonds to be included in notice of sale. The notice given of the sale of any of the bonds covered by sections 79-1701 and 79-1702 shall have included therein information to the effect that amortization bonds are the first choice and that serial bonds are the second choice. The inclusion of this information as to the order of preference of these kind of bonds in the notice of sale, shall be deemed to be an essential part of such notice, and the omission of this information shall invalidate the issuance of the bonds under such notice.

History: En. Sec. 4, Ch. 38, L. 1923.

79-1705. (5668.5) Copy of notice of sale to be sent register of state lands. A copy of the notice of sale of any kind of the bonds covered by this act shall be forwarded to the register of state lands of the state of Montana in ample time before the date of sale.

History: En. Sec. 5, Ch. 38, L. 1923.

79-1706. (5668.6) Governor to designate fiscal agencies for bonds. The governor of the state of Montana is hereby authorized to designate one or more banks or trust companies in each city in the United States where the bonds or interest coupons of any bonds issued by the state of Montana or any county, city, town, school district, irrigation district or drainage district of Montana, are made payable, as the fiscal agency for the state of Montana for the payment of such bonds and coupons.

History: En. Sec. 1, Ch. 92, L. 1925.

79-1707. (5668.7) Bond required of fiscal agencies. Before establishing and designating such fiscal agency, the governor shall, if he deem it necessary, require a bond to be given by such bank or trust company to the

state of Montana, in such amount as the governor may prescribe, approve and deem sufficient to insure the safety and prompt payment of all funds deposited with such fiscal agent. Such bond shall be approved by the governor and filed in his office.

History: En. Sec. 2, Ch. 92, L. 1925.

79-1708. (5668.8) Redemption money may be deposited with fiscal agencies. From and after the passage of this act, the treasurer of the state of Montana or the treasurer of any county, city, town, school district, irrigation district, or drainage district of Montana may be required to remit to the state fiscal agency, at least fifteen (15) days or such other period as may be agreed upon, before the maturity of any bonds or coupons payable as provided in section 79-1706, a sufficient sum of money to cover the redemption of such bonds or coupons.

History: En. Sec. 3, Ch. 92, L. 1925.

79-1709. (5668.9) Cancellation of bonds and coupons on receipt of redemption moneys by fiscal agencies. On the receipt of any funds by such fiscal agent, it shall be the duty of such fiscal agent to notify the officers from whom received of the receipt thereof, and immediately upon the payment of the bonds or coupons for which such funds were remitted, said bonds or coupons shall be cancelled and shall be returned to the treasurer of the state, county, city, town, school district, irrigation district, or drainage district entitled to the same.

History: En. Sec. 4, Ch. 92, L. 1925.

79-1710. (5668.10) Auditor to be notified by bonding districts of fiscal agents—auditor to advise governor—notice of place of payment. It shall be the duty of the treasurer of the state of Montana, or any county, city, town, school district, irrigation district, or drainage district of Montana, which has issued bonds, to advise the state auditor forthwith, giving the name and location of all banks or trust companies at which said bonds or interest coupons are made payable, whereupon the state auditor shall so advise the governor in order that the necessary fiscal agency may be designated.

It shall be the duty of the state auditor, immediately after the establishment of any fiscal agency provided for in this act, to publish a notice in some newspaper of general circulation in any city where such bonds are made payable, for two weeks, and thereafter all bonds and coupons of the state of Montana, or any county, city, town, school district, irrigation district or drainage district of Montana, which are by their terms payable at a certain bank in said city, shall be paid at said fiscal agency.

History: En. Sec. 5, Ch. 92, L. 1925.

79-1711. (5668.11) Bonding district not responsible for funds remitted to fiscal agents. No state, county, city, town, school district, irrigation district or drainage district treasurer shall be held responsible for funds remitted to any fiscal agency in pursuance of the provisions of this act, after the acknowledgment of the receipt of the same by the fiscal agent.

History: En. Sec. 6, Ch. 92, L. 1925.

79-1712. (5668.12) Liability of treasurer neglecting to perform duty under act. In case any state, county, city, town, school district, irrigation

district, or drainage district treasurer shall wilfully neglect or refuse to perform the duties imposed by this act, he shall be liable to the holder of any bonds or coupons aggrieved thereby, in a sum double the amount of such bonds or coupons as shall be dishonored by the neglect or refusal of such officer to comply with the provisions of this act, provided the state or the municipality shall have funds on hand to pay such obligation herein mentioned which may be recovered in a suit at law against such treasurer.

History: En. Sec. 7, Ch. 92, L. 1925.

79-1713. (5668.13) Change of fiscal agency by governor—notice. The governor of the state may at any time change any fiscal agency in case the agency theretofore designated shall neglect or refuse to act, and in case of a change being made, it shall be the duty of the state auditor to notify the state treasurer and all county, city, town, school district, irrigation district, and drainage district treasurers within the state of Montana, of such change, and shall publish the same as provided in section 79-1710.

History: En. Sec. 8, Ch. 92, L. 1925.

CHAPTER 18

GENERAL REFUNDING ACT APPLICABLE TO ALL OUTSTANDING BONDS

- Section 79-1801. Refunding state bonds or debentures authorized—interest rate.
79-1802. Character of bonds—amortization or serial.
79-1803. Sale of bonds and debentures.
79-1804. Scope of act.
79-1805. Cost and expense of refunding.

79-1801. Refunding state bonds or debentures authorized—interest rate. The state board of examiners is hereby authorized and empowered to refund any issue of bonds, highway or other debentures, heretofore issued by the state of Montana and which are outstanding, or which may hereafter be issued by the state of Montana, whenever in the judgment of such board it shall be deemed for the best interests of the state to do so; provided, that when the amount of any such issue of bonds or debentures is less than five hundred thousand (\$500,000.00) dollars, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least one-half of one per cent ($\frac{1}{2}$ of 1%) per annum less than the rate of interest on the bonds to be refunded, and when the amount of any such issue of bonds or debentures is more than five hundred thousand (\$500,000.00) dollars, the same shall not be refunded unless such refunding bonds shall bear interest at a rate of at least one-quarter of one per cent ($\frac{1}{4}$ of 1%) per annum less than the rate of interest on the bonds to be refunded; provided further, that refunding bonds or debentures shall not be issued in any greater amount than will be required to pay the principal of the bonds or debentures to be refunded, plus any defaulted interest thereon.

History: En. Sec. 1, Ch. 5, L. 1945.

79-1802. Character of bonds—amortization or serial. All refunding bonds or debentures issued by the state board of examiners under the provisions of this act shall be either amortization bonds, as defined by the statutes of the state, or serial bonds. Each issue of refunding bonds or debentures shall bear upon their face such statement as may be necessary

to show that they are refunding bonds or debentures and the bonds or debentures which are issued to refund. Each bond and debenture shall be signed by the members of the state board of examiners and shall have affixed thereto the great seal of the state of Montana. Each serial bond thereof shall have coupons attached thereto showing the semi-annual payments due thereon, which coupons may be signed with the facsimile signature of each member of the state board of examiners. The state board of examiners shall prescribe all other details for the form of the bonds or debentures, notice and time of sale. They shall be registered in the office of the state treasurer in a book to be provided for that purpose.

History: En. Sec. 2, Ch. 5, L. 1945.

79-1803. Sale of bonds and debentures. The refunding bonds or debentures which may be issued under the provisions of this act shall be sold by the state board of examiners in such manner as they shall deem for the best interests of the state, provided that none thereof shall be sold at less than its par value; and provided further, that if the state shall hold any bonds or debentures to be refunded by any such issue of refunding bonds or debentures as investments of institutional or other funds, the same may be exchanged for the refunding bonds or debentures, if such exchange be authorized by the proper state officers or board, subject however to the provisions for reduced interest rates required by section 79-2501.

History: En. Sec. 3, Ch. 5, L. 1945.

79-1804. Scope of act. All of the provisions of the act authorizing the issuance of the bonds or debentures which are to be refunded, insofar as the same relate to the issuance and sale, term and rate of interest, tax levies or funds for the payment and interest thereof, and time and manner of such payments, except insofar as the same may be in conflict with the provisions of this act, shall apply fully to such refunding bonds or debentures.

History: En. Sec. 4, Ch. 5, L. 1945.

79-1805. Cost and expense of refunding. The state board of examiners may require the purchaser to bear the cost and expense of refunding any issue of bonds or debentures in connection with the bid submitted, or the cost and expense may be paid out of the sinking and interest fund when there is money in such fund, and the balance remaining in such sinking and interest fund shall be transferred to and shall become the sinking and interest fund for such refunding bonds or debentures, and any and all moneys thereafter received by the state treasurer for such sinking and interest fund shall be placed in the sinking and interest fund of such refunding bonds or debentures.

History: En. Sec. 5, Ch. 5, L. 1945.

CHAPTER 19

REVENUE BOND REFINANCING ACT OF 1937

Section	79-1901.	Short title.
	79-1902.	Definitions.
	79-1903.	Grant of power.
	79-1904.	Procedure for authorization.
	79-1905.	Terms of refunding bonds.

- 79-1906. Validity of refunding bonds.
- 79-1907. Sale or exchange of refunding bonds.
- 79-1908. Security of the refunding bonds.
- 79-1909. Refunding bonds not debts.
- 79-1910. Refunding bonds exempt from taxation.
- 79-1911. Fiscal agent.
- 79-1912. Duties of municipality and officers.
- 79-1913. Additional powers and duties.
- 79-1914. Right to receivership upon default.
- 79-1915. Remedies of refunding bondholders.
- 79-1916. Construction of act.

79-1901. Short title. This act may be cited as "The Revenue Bond Refinancing Act of 1937."

History: En. Sec. 1, Ch. 121, L. 1937. 44 C.J. Municipal Corporations § 4157 et seq.
 43 Am. Jur. 394, Public Securities and Obligations, §§ 156-160.

Municipal Corporations 907.

79-1902. Definitions. The following terms wherever used or referred to in this act shall have the following meaning, unless a different meaning appears from the context:

(a) The term "municipality" shall mean any city or town of this state or the state water conservation board;

(b) The term "governing body", in the case of a city or town, shall mean the council, commission, or other body, board, officer or officers having charge of the finances thereof, and, in the case of the state water conservation board, shall mean the board itself;

(c) The term "law" shall mean any act or statute, general, special or local, of this state, including, without being limited to, the charter of any municipality;

(d) The term "enterprise" shall mean any work, undertaking, or project which the municipality is or may hereafter be authorized to construct and from which the municipality has heretofore derived or may hereafter derive revenues, for the refinancing, or the refinancing and improving of which enterprise, refunding bonds are issued under this act, and such enterprise shall include all improvements, betterments, extensions and replacements thereto, and all appurtenances, facilities, lands, rights in land, water rights, franchises, and structures in connection therewith or incidental thereto;

(e) The term "federal agency" shall include the United States of America, the president of the United States of America, the federal emergency administrator of public works, Reconstruction Finance Corporation, or any agency, instrumentality or corporation of the United States of America, which has heretofore been or may hereafter be designated or created by or pursuant to any act or acts or joint resolution or joint resolutions of the congress of the United States of America, or which may be owned or controlled, directly or indirectly, by the United States of America;

(f) The term "improving" shall mean reconstructing, replacing, extending, repairing, bettering, equipping, developing, embellishing or improving or any one or more of all of the foregoing;

(g) The term "refunding bonds" shall mean notes, bonds, certificates or other obligations of a municipality issued pursuant to this act, or pursuant to any other law, as supplemented by, or in conjunction with this act;

(h) The term "refinancing" shall mean funding, refunding, paying or discharging, by means of refunding bonds or the proceeds received from the sale thereof, all or any part of any notes, bonds, or other obligations heretofore or hereafter issued to finance or to aid in financing the acquisition, construction or improving of an enterprise and payable solely from all or any part of the revenues thereof, including interest thereon in arrears or about to become due, whether or not represented by coupons or interest certificates;

(i) The term "revenues" shall mean all fees, tolls, rates, rentals and charges to be levied and collected in connection with and all other income and receipts of whatever kind or character derived by the municipality from the operation of any enterprise or arising from any enterprise;

(j) The term "holder of bonds" or "bondholder" or any similar term shall mean any person who shall be the bearer of any outstanding refunding bond or refunding bonds registered to bearer or not registered, or the registered owner of any such outstanding bond or bonds which shall at the time be registered other than to bearer;

(k) Words importing the singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

History: En. Sec. 2, Ch. 121, L. 1937.

79-1903. Grant of power. Any municipality shall have power and is hereby authorized to refinance, or to refinance and improve, any enterprise, and for such purpose or purposes to borrow money and issue refunding bonds from time to time.

History: En. Sec. 3, Ch. 121, L. 1937.

Municipal Corporations 913.

44 C.J. Municipal Corporations § 4156.

Power of municipal corporation to refund special assessment bonds. 102 ALR 202.

Power of governmental unit to issue

bonds as implying power to refund them. 135 ALR 634.

Power of municipality or other governmental body to issue refunding bonds to retire obligation in respect of which the creation and maintenance of a sinking fund by taxation is required by constitutional or statutory provision. 157 ALR 794.

79-1904. Procedure for authorization. The refunding bonds shall be authorized by resolution or resolutions of the governing body of the municipality. Such resolutions may be adopted at a regular or special meeting and at the same meeting at which they are introduced by a majority of all the members of the governing body then in office. Such resolution or resolutions shall take effect immediately upon the adoption thereof. No other proceedings or procedure of any character whatever shall be required for the issuance of refunding bonds by the municipality.

History: En. Sec. 4, Ch. 121, L. 1937.

Municipal Corporations 917(1).

44 C.J. Municipal Corporations § 4163.

79-1905. Terms of refunding bonds. The refunding bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding the period of usefulness of the enterprise, as determined by the governing body in its discretion, nor in any event exceeding forty years from their respective dates, may bear interest at such rate or rates not exceeding the maximum rate of interest borne by the notes, bonds, or other obligations refinanced thereby, may be in such denomination

or denominations, may be in such form, either coupon or registered, may carry such registration and conversion privileges, may be executed in such manner, may be payable in such medium of payment, at such place or places, may be subject to such terms of redemption, with or without a premium, may be declared or become due before the maturity date thereof, may provide for the replacement of mutilated, destroyed, stolen, or lost bonds, may be authenticated in such manner and upon compliance with such conditions, and may contain such other terms and covenants, as may be provided by resolution or resolutions of the governing body of the municipality. Notwithstanding the form or tenor thereof, and in the absence of an express recital on the face thereof that the bond is nonnegotiable, all refunding bonds shall at all times be, and shall be treated as, negotiable instruments for all purposes.

History: En. Sec. 5, Ch. 121, L. 1937. 44 C.J. Municipal Corporations § 4198 et seq.
Municipal Corporations 923-926.

79-1906. Validity of refunding bonds. Refunding bonds bearing the signatures of officers of the municipality in office on the date of the signing thereof shall be valid and binding obligations of the municipality for all purposes, notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be officers of the municipality, the same as if such persons had continued to be officers of the municipality until after the delivery thereof. The validity of the authorization and issuance of the refunding bonds shall not be dependent on or affected in any way by proceedings taken for the improving of any enterprise for the refinancing and improving of which the refunding bonds are to be issued, or by contracts made in connection with the improving of any such enterprise. Any resolution authorizing refunding bonds may provide that any such refunding bond may contain a recital that such refunding bond is issued pursuant to this act, and any refunding bond containing such recital under authority of any such resolution shall be conclusively deemed to be valid and to have been issued in conformity with the provisions of this act.

History: En. Sec. 6, Ch. 121, L. 1937. 44 C.J. Municipal Corporations § 4206 et seq.
Municipal Corporations 931.

79-1907. Sale or exchange of refunding bonds. 1. The refunding bonds may be sold or exchanged in installments at different times or an entire issue or series may be sold or exchanged at one time. Any issue or series of refunding bonds may be exchanged in part or sold in part in installments at different times or at one time. The refunding bonds may be sold or exchanged at any time on, before, or after the maturity of any of the outstanding notes, bonds, certificates or other obligations to be refinanced thereby.

2. If the governing body determines to exchange any refunding bonds, such refunding bonds may be exchanged privately for and in payment and discharge of any of the outstanding notes, bonds or other obligations of the municipality issued to finance or to aid in financing the acquisition, the construction, the improving, the refinancing, or the improving and refinancing, of an enterprise. The refunding bonds may be exchanged for a like or

greater principal amount of such notes, bonds or other obligations of the municipality, except that the principal amount of the refunding bonds may exceed the principal amount of such outstanding notes, bonds, or other obligations to the extent necessary or advisable, in the discretion of the governing body, to fund interest in arrears or about to become due. The holder or holders of such outstanding notes, bonds, or other obligations need not pay accrued interest on the refunding bonds to be delivered in exchange therefor if and to the extent that interest is due or accrued and unpaid on such outstanding notes, bonds, or other obligations to be surrendered.

3. If the governing body determines to sell any refunding bonds, such refunding bonds shall be sold at not less than par at public or private sale in such manner and upon such terms as the governing body shall deem best for the interests of the municipality.

History: En. Sec. 7, Ch. 121, L. 1937.

44 C.J. Municipal Corporations § 4206 et seq.

Municipal Corporations 921(1).

79-1908. Security of the refunding bonds. 1. The refunding bonds shall be special obligations of the municipality and shall be payable from and secured by a lien upon the revenues of the enterprise, as shall be more fully described in the resolution or resolutions of the governing body authorizing the issuance of the refunding bonds, and, subject to the constitution of the state of Montana, and to the prior or superior rights of any person, any municipality shall have power by resolution of its governing body to pledge and assign for the security of the refunding bonds all or any part of the gross or the net revenues of such enterprise.

2. As additional security for any issue of refunding bonds hereunder, or any part thereof, any municipality shall have power, and is hereby authorized, by resolution of its governing body to confer upon the holders of the refunding bonds all rights, powers and remedies which said holders would be entitled to if they were the owners and had possession of the notes, bonds or other obligations for the refinancing of which such refunding bonds shall have been issued including, but not limited to, the preservation of the lien of such notes, bonds or other obligations without extinguishment, impairment or diminution thereof. In the event any municipality exercises the power conferred by this paragraph, (a) each refunding bond shall contain a recital to the effect that the holder thereof has been granted the additional security provided by this paragraph and (b) each note, bond, certificate or other obligation of the municipality to be refinanced by any such refunding bonds, shall be kept intact and shall not be cancelled or destroyed until the refunding bonds, and interest thereon, have been finally paid and discharged but shall be stamped with a legend to the effect that such note, bond, certificate or other obligation has been refunded pursuant to the revenue bond refinancing act of 1937.

3. All refunding bonds of the same issue shall be equally and ratably secured, without priority by reason of number, date of bonds, of sale, of execution or of delivery, by a lien upon the revenues of the enterprise in accordance with the provisions of this section and the resolution or resolutions authorizing the issuance of such refunding bonds.

4. Nothing in this section or in any other sections of this act shall be deemed in any way to alter the terms of any agreements made with the

holders of any outstanding notes, bonds, or other obligations of the municipality or to authorize the municipality to alter the terms of any such agreements, or to impair, or to authorize the municipality to impair, the rights and remedies of any creditors of the municipality.

5. Nothing in this section or in any other section of this act shall be deemed in any way to authorize any municipality to do anything in any manner or for any purpose which would result in the creation or incurring of a debt or indebtedness or the issuance of any instrument which would constitute a bond or debt within the meaning of any provision, limitation, or restriction of the constitution relating to the creation or incurring of a debt or indebtedness or the issuance of an instrument constituting a debt.

History: En. Sec. 8, Ch. 121, L. 1937.

Municipal Corporations 950.

44 C.J. Municipal Corporations § 4223.

79-1909. Refunding bonds not debts. 1. No recourse shall be had for the payment of the refunding bonds, or interest thereon, or any part thereof, against the general fund of any municipality, nor shall the credit or taxing power of any municipality be deemed to be pledged thereto.

2. The refunding bonds, and interest thereon, shall not be a debt of the municipality, nor a charge, lien or encumbrance, legal or equitable, upon any property of the municipality, or upon any income, receipts, or revenues of the municipality other than such of the revenues of the enterprise as shall have been pledged to the payment thereof, and every refunding bond shall recite in substance that said bond, including interest thereon, is payable solely from the revenues pledged to the payment thereof and that the municipality is under no obligation to pay the same, except from said revenues.

History: En. Sec. 9, Ch. 121, L. 1937.

Municipal Corporations 950.

44 C.J. Municipal Corporations § 4223 et seq.

38 Am. Jur. 141, Municipal Corporations, §§ 458-461.

Pledge or appropriation of revenue from

utility or other property in payment therefor, as indebtedness within constitutional or statutory limitation of indebtedness of municipality. 72 ALR 687.

Funding or refunding obligations as subject to conditions respecting limitation of indebtedness or approval by voters. 97 ALR 442.

79-1910. Refunding bonds exempt from taxation. The refunding bonds and the income therefrom shall be exempt from taxation, except inheritance, estate and transfer taxes.

History: En. Sec. 10, Ch. 121, L. 1937.

Taxation 218.

61 C.J. Taxation § 465 et seq.

79-1911. Fiscal agent. Any municipality shall have power in connection with the issuance of refunding bonds to appoint a fiscal agent to provide for the powers, duties and functions and compensations of such fiscal agent, to limit the liabilities of such fiscal agent to prescribe a method for the resignation, removal, merger or consolidation of such fiscal agent and the appointment of a successor fiscal agent and the transfer of rights and properties to such successor fiscal agent.

History: En. Sec. 11, Ch. 121, L. 1937.

43 C.J. Municipal Corporations § 1614 et seq.

Municipal Corporations 214(1).

79-1912. Duties of municipality and officers. 1. In order that the payment of the refunding bonds, and interest thereon, shall be adequately

secured, any municipality issuing refunding bonds pursuant to this act and the proper officers, agents and employees thereof, are hereby directed, and it shall be the mandatory duty of such officers, agents and employess under this act, and it shall further be of the essence of the contract of such municipality with the bondholders, at all times:

(a) To pay or cause to be paid punctually the principal of every refunding bond, and the interest thereon, on the date or dates and at the place or places and in the manner and out of the funds mentioned in such refunding bonds and in the coupons thereto appertaining and in accordance with the resolution authorizing their issuance;

(b) To operate the enterprise in an efficient and economical manner and to establish, levy, maintain and collect such fees, tolls, rentals, rates and other charges in connection therewith as may be necessary or proper, which said fees, tolls, rates, rentals and other charges shall be at least sufficient after making due and reasonable allowances for contingencies and for a margin of error in the estimates;

(1) to pay all current expenses of operation, maintenance and repair of such enterprise, (2) to pay the interest on and principal of the refunding bonds as the same shall become due and payable, (3) to comply in all respects with the terms of the resolution or resolutions authorizing the issuance of refunding bonds or any other contract or agreement with the holders of the refunding bonds, and (4) to meet any other obligations of the municipality which are charges, liens, or encumbrances upon the revenues of such enterprise;

(c) To operate, maintain, preserve and keep, or cause to be operated, maintained, preserved and kept, the enterprise and every part and parcel thereof, in good repair, working order and condition;

(d) To preserve and protect the security of the refunding bonds and the rights of the holders thereof, and to warrant and defend such rights against all claims and demands of all persons whomsoever;

(e) To pay and discharge, or cause to be paid or discharged any and all lawful claims for labor, materials and supplies, which, if unpaid, might by law become a lien or charge upon the revenues or any part thereof, prior or superior to the lien of the refunding bonds, or which might impair the security of the refunding bonds, to the end that the priority and security of the refunding bonds shall be fully preserved and protected;

(f) To hold in trust the revenues pledged to the payment of the refunding bonds for the benefit of the holders of the refunding bonds and to apply such revenues only as provided by the resolution or resolutions authorizing the issuance of the refunding bonds, or if such resolution or resolutions shall thereafter be modified in the manner provided therein or herein, only as provided in such resolution or resolutions as modified;

(g) To keep proper books of record and accounts of the enterprise (separate from all other records and accounts) in which complete and correct entries shall be made of all transactions relating to the enterprise or any part thereof, and which, together with all other books and papers of the municipality, shall at all times be subject to the inspection of the holder or holders of not less than ten per cent of the refunding bonds then outstanding or his or their representatives duly authorized in writing.

2. None of the foregoing duties shall be construed to require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 12, Ch. 121, L. 1937. 44 C.J. Municipal Corporations § 4223 et seq.

Municipal Corporations 950.

79-1913. Additional powers and duties. 1. The governing body of any municipality shall have power, in addition to the other powers conferred by this act, to insert provisions in any resolution authorizing the issuance of refunding bonds, which shall be a part of the contract with the holders of the refunding bonds, as to:

(a) Limitations on the purpose to which the proceeds of sale of any issue of refunding bonds, or any notes, bonds or other obligations then or thereafter to be issued to finance the improving of the enterprise, may be applied;

(b) Limitations on the issuance of additional refunding bonds, or additional notes, bonds or other obligations to finance the improving of the enterprise, and on the lien thereof;

(c) Limitations on the right of the municipality or its governing body to restrict and regulate the use of the enterprise;

(d) The amount and kind of insurance to be maintained on the enterprise, and the use and disposition of insurance moneys;

(e) Pledging all or any part of the revenues of the enterprise to which its right then exists or the right to which may thereafter come into existence;

(f) Covenanting against pledging all or any part of the revenues of the enterprise to which its right then exists or the rights to which may thereafter come into existence;

(g) Events of default and terms and conditions upon which any or all of the refunding bonds shall become or may be declared due before maturity and as to the terms and conditions upon which such declaration and its consequences may be waived;

(h) The rights, liabilities, powers and duties arising upon the breach by it of any covenants, conditions or obligations;

(i) The vesting in a trustee or trustees the right to enforce any covenants made to secure, to pay, or in relation to the refunding bonds, as to the powers and duties of such trustee or trustees, and the limitation of liabilities thereof, and as to the terms and conditions upon which the holders of the refunding bonds or any proportion or percentage of them may enforce any covenants made under this act or duties imposed hereby;

(j) A procedure by which the terms of any resolution authorizing refunding bonds, or any other contract with bondholders, including but not limited to an indenture of trust or similar instrument, may be amended or abrogated and as to the amount of refunding bonds the holders of which must consent thereto and the manner in which such consent may be given;

(k) The execution of all instruments necessary or convenient in the exercise of the powers granted by this act or in the performance of the duties of the municipality and the officers, agents and employees thereof;

(l) Refraining from pledging or in any manner whatever claiming or taking the benefit or advantage of any stay or extension law whenever enacted, nor at any time hereafter in force, which may affect the duties or

covenants of the municipality in relation to the refunding bonds, or the performance thereof, or the lien of such refunding bonds;

(m) The purchase out of any funds available therefor, including but not limited to the proceeds of refunding bonds, of any outstanding notes, bonds or obligations, including but not limited to refunding bonds, and the price or prices at which and the manner in which such purchases may be made;

(n) Any other acts and things as may be necessary or convenient or desirable in order to secure the refunding bonds, or as may tend to make the refunding bonds more marketable.

2. Nothing in this section shall be construed to authorize any municipality to make any covenants, to perform any act or to do anything which shall require the expenditure in any manner or for any purpose by the municipality of any funds other than revenues received or receivable from the enterprise.

History: En. Sec. 13, Ch. 121, L. 1937.

44 C.J. Municipal Corporations § 4163 et seq.

Municipal Corporations 917(1).

79-1914. Right to receivership upon default. 1. In the event that the municipality shall default in the payment of the principal or interest on any of the refunding bonds after the same shall become due, whether at maturity or upon call for redemption, and such default shall continue for a period of thirty days, or in the event that the municipality or the governing body or officers, agents or employees thereof shall fail or refuse to comply with the provisions of this act or shall default in any agreement made with the holders of the refunding bonds, any holder or holders of refunding bonds, or trustee therefor, shall have the right to apply in an appropriate judicial proceeding to the district court, or any court of competent jurisdiction, for the appointment of a receiver of the enterprise, whether or not all refunding bonds have been declared due and payable and whether or not such holder, or trustee therefor, is seeking or has sought to enforce any other right, or exercise any remedy in connection with such refunding bonds. Upon such application the district court may appoint, and if the application is made by the holders of twenty-five per centum in principal amount of such refunding bonds then outstanding, or any trustee for holders of such refunding bonds in such principal amount, shall appoint a receiver of the enterprise.

2. The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of the enterprise and each and every part thereof and may exclude the municipality, its governing body, officers, agents, and employees and all persons claiming under them wholly therefrom and shall have, hold, use, operate, manage and control the same and each and every part thereof, and, in the name of the municipality or otherwise, as the receiver may deem best, and shall exercise all the rights and powers of the municipality with respect to the enterprise as the municipality itself might do. Such receiver shall maintain, restore, insure and keep insured, the enterprise, and from time to time shall make all such necessary or proper repairs as to such receiver may seem expedient and shall establish, levy, maintain and collect such fees, tolls, rentals, and other charges in connection with the enterprise as such

receiver may deem necessary or proper and reasonable, and shall collect and receive all revenue and shall deposit the same in a separate account and apply such revenues so collected and received in such manner as the court shall direct.

3. Whenever all that is due upon the refunding bonds, and interest thereon, and upon any other notes, bonds, or other obligations, and interest thereon, having a charge, lien, or encumbrance on the revenues of the enterprise and under any of the terms of any covenants or agreements with bondholders shall have been paid or deposited as provided therein, and all defaults shall have been cured and made good, the court may in its discretion, and after such notice and hearing as it deems reasonable and proper, direct the receiver to surrender possession of the enterprise to the municipality, the same right of the holders of the refunding bonds to secure the appointment of a receiver to exist upon any subsequent default as hereinabove provided.

4. Such receiver shall in the performance of the powers hereinabove conferred upon him, act under the direction and supervision of the court making such appointment and shall at all times be subject to the orders and decrees of such court and may be removed thereby. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any functions specifically set forth herein.

History: En. Sec. 14, Ch. 121, L. 1937.

44 C.J. Municipal Corporations § 4222 et seq.; 53 C.J. Receivers § 22 et seq.

Municipal Corporations § 939; Receivers § 21, 82.

79-1915. Remedies of refunding bondholders. 1. Subject to any contractual limitations binding upon the holders of any issue or refunding bonds, or trustee therefor, including but not limited to the restriction of the exercise of any remedy to the specified proportion of percentage of such holders, any holder of refunding bonds, or trustee therefor, shall have the right and power, for the equal benefit and protection of all holders of refunding bonds similarly situated:

(a) By mandamus or other suit, action or proceedings at law or in equity to enforce his rights against the municipality and its governing body and any of its officers, agents and employees and to require and compel such municipality or such governing body or any such officers, agents or employees to perform and carry out its and their duties and obligations under this act and its and their covenants and agreements with bondholders;

(b) By action or suit in equity to require the municipality and the governing body thereof to account as if they were the trustee of an express trust;

(c) By action or suit in equity to enjoin any acts or things which may be unlawful or in violation of the rights of the bondholders;

(d) Bring suit upon the refunding bonds.

2. No remedy conferred by this act upon any holder of refunding bonds, or any trustee therefor, is intended to be exclusive of any other remedy, but each such remedy is cumulative and in addition to every other remedy and may be exercised without exhausting and without regard to any other

remedy conferred by this act or by any other law. No waiver of any default or breach of duty or contract, whether by any holder of refunding bonds, or any trustee therefor, shall extend to or shall affect any subsequent default or breach of duty or contract or shall impair any rights or remedies thereon. No delay or omission of any bondholder or any trustee therefor to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or acquiescence therein. Every substantive right and every remedy, conferred upon the holders of refunding bonds, may be enforced and exercised from time to time and as often as may be deemed expedient. In case any suit, action or proceeding to enforce any right or exercise any remedy shall be brought or taken and then discontinued or abandoned, or shall be determined adversely to the holder of the refunding bonds, or any trustee therefor, then and in every such case the municipality and such holder or trustee, shall be restored to their former positions and rights and remedies as if no such suit, action or proceeding had been brought or taken.

History: En. Sec. 15, Ch. 121, L. 1937.

38 C.J. Mandamus § 408; 44 C.J. Municipal Corporations § 4260 et seq.

Mandamus 9110; Municipal Corporations 955(1).

79-1916. Construction of act. This act constitutes full and complete authority for the issuance of refunding bonds. No procedure or proceedings, publications, notices, consents, approvals, orders, acts or things by any governing body of any municipality, or any board, officer, commission, department, agency or instrumentality of the state or any municipality shall be required to issue any refunding bonds or to do any act or perform any thing under this act, except as may be prescribed in this act. The powers conferred by this act shall be in addition and supplemental to, and not in substitution for, and the limitations imposed by this act shall not affect, the powers conferred by any other law. This act is remedial in nature and shall be liberally construed.

History: En. Sec. 16, Ch. 121, L. 1937.

44 C.J. Municipal Corporations § 4157 et seq.

Municipal Corporations 913.

CHAPTER 20

BOND VALIDATING ACT

Section 79-2001. Title of act.

79-2002. Definitions.

79-2003. Validation of bonds heretofore issued.

79-2001. Title of act. This act may be cited as "The 1947 Bond Validating Act".

History: En. Sec. 1, Ch. 81, L. 1947.

Constitutionality

Held, that this chapter, construed in connection with ch. 55, l. 1941, (omitted) directing the state board of examiners to issue and sell the bonds for the erection of necessary buildings at the state hospital for the insane, does not run counter to

the provisions of art. XIII, sec. 2 of the constitution prescribing the manner in which state indebtedness in excess of \$100,000 may be created; such provision does not require that a law creating a state debt in excess of \$100,000 shall be submitted to the people at a general election for their approval or rejection, but only a law authorizing the debt. *Nordquist v. Ford*, 112 M 278, 280, 114 P 2d 1071.

Title of 138 Words Insufficient to Invalidate

Held, that though sec. 37-105, limits the title of an act referred to the people to 100 words, a point not raised until after the people had approved the act, was merely a procedural defect and as

such insufficient to invalidate it, particularly so in view of ch. 45, l. 1941, (omitted) validating all bond issues theretofore authorized, thus including the issue for erection of buildings at the state hospital for the insane. *Nordquist v. Ford*, 112 M 278, 282, 114 P 2d 1071.

79-2002. Definitions. The following terms, wherever used or referred to in this act, shall have the following meaning:

(a) The term "public body" shall include a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the State of Montana, and shall also include the state board of education, the state board of examiners, the state water conservation board, the state highway commission, or any other governmental agency of this state.

(b) The term "bonds" shall include bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien or encumbrance on specific revenues, income or property of a public body, including all instruments or obligations payable from a special fund.

History: En. Sec. 2, Ch. 81, L. 1947.

79-2003. Validation of bonds heretofore issued. All bonds heretofore issued for any of the purposes for which bonds may be issued by any public body of this state and all proceedings heretofore taken for the authorization and issuance of bonds by such public body, and the sale, exchange, execution and delivery thereof are hereby validated, ratified, approved and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution or delivery; and bonds of such public bodies, whether issued or hereafter issued under the authority of proceedings heretofore taken, are and shall be binding, legal, valid and enforceable obligations of such public body.

History: En. Sec. 3, Ch. 81, L. 1947.

Ch. 164, L. 1939; Ch. 45, L. 1941; Ch. 117, L. 1943; Ch. 196, L. 1945.

NOTE.—Previous bond validating acts enacted since 1935 were: Ch. 6, L. 1937;

TITLE 80

STATE INSTITUTIONS

(See also State Orphans Home, Chapter 1, Title 10, and Montana State Hospital, Title 38.)

- Chapter 1. Montana state school for the deaf and blind, 80-101 to 80-123.
2. Montana state tuberculosis sanitarium, 80-201 to 80-217.
3. Soldiers' home, 80-301 to 80-322.
4. Farmers' institutes, 80-401 to 80-404.
5. Montana state fair, 80-501 to 80-505.
6. State bureau of criminal identification, 80-601 to 80-608.
7. The state prison, 80-701 to 80-749.
8. Montana state industrial school, 80-801 to 80-827.
9. State vocational school for girls, 80-901 to 80-930.
10. Admission of females to reformatory institutions, 80-1001 to 80-1006.
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CHAPTER 1

MONTANA STATE SCHOOL FOR THE DEAF AND BLIND

- Section 80-101. School for deaf and blind transferred to Great Falls.
80-102. Montana state school for deaf and blind independent institution—rights saved.
80-103. Objects and purposes of institution.
80-104. Rules and regulations by state board of education.
80-105. Eligibility of children for admittance.
80-106. When duty of parent, guardian of child to make application for admission of child—penalty.
80-107. Duration of attendance at school.
80-108. Admission of nonresident children and advance payment of cost—Indian children.
80-109. Provisions for pauper inmates.
80-110. Data relating to deaf and blind children included in school census—list transmitted to school superintendent.
80-111. Time of regular school term.
80-112. Exemptions of employees of school.
80-113. Property vested in school.
80-114. Duty of state board of education as to property of school.
80-115. Deaf and blind school fund.
80-116. Limitation on expenditure of school moneys.
80-117. Added duties of superintendent of school for the deaf and blind.
80-118. Part-time instructor.
80-119. Qualifications.
80-120. Employment placement officer's duties.
80-121. Field worker's duties.
80-122. Part-time instructor's duties.
80-123. Salary.

80-101. School for deaf and blind transferred to Great Falls. The state board of education is hereby instructed on or before the second Wednesday in September, 1937, to transfer the school for the deaf and blind, now being constructed at Boulder, Montana, to the new building erected for that purpose at Great Falls, Montana, and to provide the necessary staff for its operation and the required furnishings and equipment.

The equipment in the printing shop and such other equipment in the institution at Boulder, used exclusively for instructional purposes for the deaf

and blind shall be transferred to Great Falls, Montana, and installed in the new school for the deaf and blind hereby created.

History: En. Sec. 1, Ch. 43, L. 1937. Asylums 7.
7 C.J.S. Asylums § 5.

80-102. Montana state school for deaf and blind independent institution—rights saved. The school for the deaf and blind, formerly located at Boulder in connection with the Montana state training school, but heretofore transferred to the city of Great Falls, shall be known and designated as the Montana state school for the deaf and blind, and shall be conducted as a separate and independent unit and institution of the state of Montana, under the general supervision, direction, and control of the state board of education, with a local executive board to be appointed in the manner, and to have the powers, authority and duties granted to and required of such board, by the provisions of sections 75-302 to 75-309; provided that the transfer of such school, or any change in the name thereof, or in the objects or purposes thereof, shall not be deemed or construed to impair or work any forfeiture or alteration of any rights, grants or property heretofore made to or acquired by such school or by the state for the use and benefit of such school.

History: En. Sec. 1, Ch. 182, L. 1943.

80-103. Objects and purposes of institution. The Montana state school for the deaf and blind shall be a residential and boarding school for children and adolescents who are deaf or blind, or whose hearing or sight is so defective that they cannot be successfully taught, and for such reason are unable to receive a sufficient or proper education in the public schools of the state. The object and purpose of such school shall be to furnish and provide, by the use of specialized methods and systems, an ordinary public school education and to teach such trades and vocations as will enable children attending such school to become independent and self-sustaining citizens. Increased and additional facilities shall be provided, from time to time, for the more thorough and successful training of those who show a special aptitude for becoming proficient at such trades or vocations. In the interest of economy and increased opportunities for vocational education and training, and in order that pupils may be practically taught such trades and vocations, so much of all carpentering, printing, painting, baking, sewing, and other or similar work necessary to be done for and in and about the school, as the superintendent of the school may deem practical, shall be done by such pupils under competent teachers and foremen, permanently or temporarily employed for such purpose, and this requirement shall apply to both male and female pupils.

History: En. Sec. 2, Ch. 182, L. 1943.

80-104. Rules and regulations by state board of education. The state board of education shall adopt and prescribe such rules and regulations as the board may deem necessary and proper for the maintenance and government of the school, the admission of children thereto in conformity with the provisions of this act, and the qualifications and compensation of the superintendent and teaching staff of the school; provided that said superintendent

80-103
(SL. '43, C. 182
Sec. 2)
Amended
SL. '49, C. 189
Sec. 1, P. 366

must have a ready and working knowledge of the sign language and must have taught three (3) or more years in a school for the deaf.

History: En. Sec. 3, Ch. 182, L. 1943.

80-105. Eligibility of children for admittance. On proper application being made therefor, deaf and blind children who have reached the age of five (5) and who are not more than eighteen (18) years of age residing within the state of Montana, and nonresident children, between such ages, who are not mentally deficient, dangerously diseased in body, or of confirmed immorality, or incapacitated for useful instruction by reason of physical disability, may be admitted to such school.

History: En. Sec. 4, Ch. 182, L. 1943.

80-106. When duty of parent, guardian of child to make application for admission of child—penalty. Every parent, guardian, or other person having the custody or control of any child between the ages of five (5) and eighteen (18) years, whose hearing or sight is so defective that such child cannot be properly educated in the public schools of the state, shall make application to the superintendent of said school for admission to such school for at least nine (9) months during each school year for a period of ten (10) years, unless such child is being taught in a private school or in a similar institution in another state which affords such child an education to the same extent as such child can receive in the Montana state school for the deaf and blind; or unless such child be found, for any reason, to be ineligible to admission to such school. If such child is being taught in a private school, or in a similar institution in another state, such attendance must be for at least nine (9) months in each year for ten (10) years, unless such child shall arrive at the age of twenty-one (21) years, or shall have become self-sustaining before the expiration of such ten (10) year period.

The failure of any parent, guardian or other person having the custody or control of any blind or deaf child to comply with the provisions of this section shall be deemed a misdemeanor and punishable by a fine of not less than five dollars (\$5.00) nor more than twenty-five dollars (\$25.00) for the first offense, and not less than twenty-five dollars (\$25.00) nor more than fifty dollars (\$50.00) for each subsequent offense. Upon conviction of any parent, guardian or person having custody or control of any such child of a failure to comply with the provisions of this section, the court in which such conviction is had shall enter in its docket an order directing such parent, guardian or other person to comply with the provisions of this section within ten (10) days thereafter, and shall deliver a copy of such order to such parent, guardian or other person.

History: En. Sec. 5, Ch. 182, L. 1943.

80-107. Duration of attendance at school. Every child admitted to such school shall be entitled to attend such school for a period of ten (10) years, or until reaching the age of twenty-one (21) years, if such age be reached before the expiration of such ten (10) year period. Any child who has attended the school for a period of ten (10) years, but has not yet reached the age of twenty-one (21) years, with the consent and approval of the superintendent of the school, may petition the state board of education to remain in such school for an additional period of two (2) years, or

until arriving at the age of twenty-one (21) years if such child will arrive at such age before the expiration of such additional two (2) year period. The board shall consider the petition upon the scholastic record and the record as to obedience and morality of such child while in such school and if it finds it proper to do so may grant the same; provided, that nothing in this section shall be construed so as to prevent the suspension or expulsion of any child at any time for insubordination or other cause deemed good and sufficient by the board of education and superintendent.

History: En. Sec. 6, Ch. 182, L. 1943.

80-108. Admission of nonresident children and advance payment of cost—Indian children. Deaf and blind children, who are not residents of the state of Montana, upon application being made therefor, may be admitted to the school, subject to all eligibility requirements prescribed for children who are residents of the state; provided that for each such nonresident child there shall be paid to the school in advance a sum of money the amount of which shall be determined by a careful estimate of the whole per capita cost of maintaining the school during the year immediately preceding the date of the application; and provided further, that no nonresident child shall be admitted to the school except when the full capacity thereof is not required for children who are residents of the state. Indian children who are wards of the United States shall be eligible to, and shall be admitted to such school on the same terms as nonresidents.

History: En. Sec. 7, Ch. 182, L. 1943.

80-109. (1463) Provisions for pauper inmates. In all cases where a person to be sent to said school is too poor to pay for necessary clothing and transportation, the judge of the district court of the district where such person resides, upon application of any relative or friend, or of any officer of the county where said person resides, shall, if he deem the person a proper subject, make an order to that effect, which shall be certified by the clerk of the court to the superintendent of said school, who shall then provide the necessary clothing and transportation at the expense of the county, and upon his rendering his proper accounts therefor quarter-annually the county commissioners shall allow and pay the same out of the county treasury.

History: En. Sec. 2344, Pol. C. 1895; Asylums 5.
re-en. Sec. 1170, Rev. C. 1907; re-en. Sec. 7 C.J.S. Asylums § 7.
1463, R. C. M. 1921. Cal. Pol. C. Sec. 2240.

80-110. Data relating to deaf and blind children included in school census—list transmitted to school superintendent. Each school district in the state, when taking the school census required by section 75-1903, shall use reasonable diligence to ascertain the number of blind and deaf children residing in his district, between the ages of five (5) and eighteen (18) years, with the name and post office address of each. And every such clerk shall include in his report of such census to the county superintendent of schools the names and addresses of all such children in his district, as shown by such census, together with the names and post office addresses of the parents, guardians or other persons having the custody or control of any thereof. The county superintendent of schools, not later than the thirtieth day of October in each year, shall make a list in duplicate of all such chil-

dren, as shown by such census with the names and post office addresses of the parents, guardians or other persons having the custody and control of any thereof, and shall transmit one (1) copy thereof to the superintendent of the Montana state school for the deaf and blind.

History: En. Sec. 8, Ch. 182, L. 1943.

80-111. Time of regular school term. The regular term of school shall begin on the second Wednesday of September and close on the second Wednesday of June following; provided that the superintendent of such school, with the consent and approval of the state board of education may provide for the opening of the school on another day and for the closing of the same on another day, provided that the term fixed shall be for a period of nine (9) months.

History: En. Sec. 9, Ch. 182, L. 1943.

80-112. Exemptions of employees of school. All persons employed in the school, while so employed, shall be exempt from all jury service and from working on roads and highways, but not from paying per capita road or poor taxes or property taxes; and the certificate of the superintendent of the school, under the official seal of the school, shall be sufficient evidence of such employment.

History: En. Sec. 10, Ch. 182, L. 1943.

80-113. Property vested in school. All lands heretofore granted by the government of the United States to the state of Montana for the use and benefit of the deaf and dumb are hereby set apart and declared to be for the use and benefit in perpetuity of the Montana state school for the deaf and blind, and all funds arising from the sale or leasing of said lands, or any part or portion thereof, shall be applied to the proper use and benefit thereof, and all donations, gifts, devises or grants which have been heretofore or may hereafter be made by any person or corporation to said school shall vest in the state of Montana for the use and benefit thereof.

History: En. Sec. 11, Ch. 182, L. 1943.

80-114. Duty of state board of education as to property of school. The state board of education shall have the power and it shall be its duty to receive, hold, manage, use, and dispose of any and all real and personal property made over to such board, or to the state of Montana, by purchase, gift, devise, bequest, or otherwise acquired, and the proceeds, interest and income thereof, for the use and benefit of said school.

History: En. Sec. 12, Ch. 182, L. 1943.

80-115. Deaf and blind school fund. The fund heretofore designated as the deaf and dumb fund shall hereafter be designated as the deaf and blind school fund, and all moneys in the treasury standing to the credit of such deaf and dumb fund at the time this act takes effect, shall be transferred to such deaf and blind school fund, and all moneys thereafter paid into the state treasury for the use or benefit of the Montana state school for the deaf and blind shall be deposited by the state treasurer to the credit of said deaf and blind school fund.

History: En. Sec. 13, Ch. 182, L. 1943.

80-116. Limitation on expenditure of school moneys. No moneys belonging to the deaf and blind school fund shall be expended for any purpose other than for the Montana state school for the deaf and blind, and any moneys belonging to any fund or funds which may be hereafter created for such school shall be expended for the express purpose designated in the act or acts creating such fund or funds, and for no other purpose.

History: En. Sec. 14, Ch. 182, L. 1943.

80-117. Added duties of superintendent of school for the deaf and blind. The superintendent of the Montana school for the deaf and blind is hereby authorized to add to his present duties that of acting as combined employment placement officer and school field worker temporarily for the sake of economy in order to set up this office and operate same until such time as in his opinion evidence warrants employing a part-time employment officer and school field worker and part-time instructor.

History: En. Sec. 1, Ch. 189, L. 1945.

80-118. Part-time instructor. When said superintendent believes he needs such part-time instructor he shall make recommendations to the state board of education.

History: En. Sec. 2, Ch. 189, L. 1945.

80-119. Qualifications. Such employment placement officer must have a working knowledge of the sign language and taught three years or more in a deaf school.

History: En. Sec. 3, Ch. 189, L. 1945.

80-120. Employment placement officer's duties. As employment placement officer it shall be his duty to gather and record such data and statistics to help him locate suitable employment for such deaf and hard of hearing persons not in attendance at said school, or for those who have been trained by the state bureau of vocational rehabilitation when it so requests such assistance. He shall consult with various county, state and federal agencies and with state department of public welfare to secure employment for self-sustaining persons. He shall co-ordinate his work with such federal agencies as social security and re-employment, for those out of work, as required under this law.

History: En. Sec. 4, Ch. 189, L. 1945.

80-121. Field worker's duties. As field worker he shall consult with school officers, parents or guardians of adult deaf relative to handicapped children, relative to their admission to said school.

History: En. Sec. 5, Ch. 189, L. 1945.

80-122. Part-time instructor's duties. As part-time instructor he shall teach and prepare students in the school, for employment and other duties, as directed by the superintendent.

History: En. Sec. 6, Ch. 189, L. 1945.

80-123. Salary. His salary shall be fixed by the board and paid as salaries of other employees of said school.

History: En. Sec. 7, Ch. 189, L. 1945.

CHAPTER 2

MONTANA STATE TUBERCULOSIS SANITARIUM

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80-201. (1511) Establishment and objects. There is hereby established a state hospital to be known as the "Montana State Tuberculosis Sanitarium" for the treatment of tuberculosis and also what is commonly called "miners' consumption," the location thereof to be determined as hereinafter specified.

History: En. Sec. 1, Ch. 125, L. 1911; 41 C.J.S. Hospitals § 4.
 re-en. Sec. 1511, R. C. M. 1921. 26 Am. Jur. 587, Hospitals and Asylums,
 generally.
 Contagious disease hospital as nuisance.
 4 ALR 995.

Hospitals—2.

80-202. (1512) Executive board. The governor, by and with the advice and consent of the state board of examiners, shall appoint two citizens of the state of Montana, one of which shall be a physician, who, together with the president of such institution, shall constitute the executive board of the Montana state tuberculosis sanitarium. The president of such institution shall be ex officio a member of said board, and shall be the chairman thereof. The ex officio member of said board shall hold his office during his continuance as president of such institution, and the two members appointed by the governor shall hold office for the term of four years, unless sooner removed by the governor; provided, that of the members of the executive board first appointed, one shall be appointed for the term of two years and one for a term of four years, and appointments to fill vacancies occurring by death, resignation, or other cause shall be made for the unexpired term. Such members shall qualify by taking and filing their oath of office with the state board of examiners. The members of said executive board, except the chairman, shall receive such compensation as shall be fixed by the state board of examiners, not exceeding the sum of five dollars for each day actually spent in the discharge of their official duties, and not exceeding the sum of one hundred twenty-five dollars in any one year for each member, and such members shall also be reimbursed from the amount appropriated by the legislature for the maintenance and support of such institution, all expenses necessarily incurred by them in the discharge of their official duties as members of said board.

Any member of said board may at any time be removed from office by the governor for any cause he may deem sufficient, after an opportunity

to be heard in his defense, and others may be appointed in their places as herein provided. Two members of said board shall constitute a quorum.

History: En. Sec. 2, Ch. 125, L. 1911; Hospitals 3.
re-en. Sec. 1512, R. C. M. 1921. 41 C.J.S. Hospitals § 5.

80-203. (1513) Powers and duties of executive board. Said executive board shall have such immediate direction and control, other than financial, of the affairs of such institution as may be conferred on such board by the state board of examiners, subject always to the supervision and control of said state board of examiners.

Subject to the approval of the state board of examiners, they shall establish such by-laws, rules, and regulations as they may deem necessary or expedient for regulating the appointment and duties of officers and employees of the sanitarium, and for the internal government, discipline, and management of the same; to maintain an effective inspection of the affairs and management of the institution; to keep in a book provided for that purpose an exact and full record of the doings of the board, which shall be open at all times to the inspection of its members, the governor of the state, the state board of examiners, the state board of health, or any member thereof, or any person appointed by the governor or the legislative assembly.

The executive board shall meet in regular session at least once in each quarter, and monthly or oftener if the business of such institution requires it, and shall have general charge of the administration of said institution.

On or before the first Monday in June of each year, said board shall make a detailed statement and report of all its transactions and of the condition of the institution, including the number of physicians and other employees, with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of such institution, which report shall contain such other information or recommendations as may be required by the state board of examiners, and the state board of examiners shall have authority to call for a report and statement from such executive board at any time such board may deem it advisable, which shall be immediately furnished upon request. All such reports by such executive board shall be made in duplicate, one copy shall be retained by such executive board, and the other copy shall be filed with the state board of examiners.

History: En. Sec. 3, Ch. 125, L. 1911;
re-en. Sec. 1513, R. C. M. 1921.

80-204. (1514) Site of sanitarium. The state board of examiners is hereby empowered to select a site for the establishment of said state sanitarium at such place in the state of Montana as it may deem advisable.

History: En. Sec. 4, Ch. 125, L. 1911; Hospitals 2.
re-en. Sec. 1514, R. C. M. 1921. 41 C.J.S. Hospitals § 4.

80-205. (1515) Buildings and improvements. The state board of examiners, as soon as a site for such sanitarium is selected, shall proceed with the construction and equipment of all necessary and suitable buildings, including heating, lighting, plumbing, laundry fixtures, and a water supply thereof, and the construction of roads thereto, and to provide and adopt such plans as may be necessary and approved by the state board of health for the construction of such buildings, at an expense not exceeding fifty thousand dollars; and for this purpose said state board of examiners shall

make and award contracts for the erection and construction of said buildings and the equipment thereof, and employ a competent person to superintend the construction thereof at a salary not to exceed three per cent. of the cost of the buildings, which sum shall be paid out of the appropriation hereby made for the construction of said buildings. The state board of examiners shall require the contractor or contractors constructing the buildings and equipment herein provided for to give to the state of Montana a good and sufficient bond for the completion thereof within the time prescribed in the contract, and in accordance with the plans and specifications adopted therefor.

History: En. Sec. 5, Ch. 125, L. 1911;
re-en. Sec. 1515, R. C. M. 1921.

80-206. (1516) President. The governor, by and with the advice and consent of the state board of examiners, shall appoint a president of said sanitarium, who shall be a well-educated physician, legally qualified to practice medicine in Montana, with an experience of at least six years in the actual practice of his profession, including at least a year's actual experience in a general hospital, and reasonable experience in the treatment of tuberculosis. The said president, may be discharged or suspended at any time by the state board of examiners in its discretion.

History: En. Sec. 6, Ch. 125, L. 1911; Hospitals 4.
re-en. Sec. 1516, R. C. M. 1921. 41 C.J.S. Hospitals § 9.

80-207. (1517) Duties of president. The president shall:

1. Appoint such employees as are necessary and proper for a due administration of the affairs of such institution, prescribe their duties and offices, and, subject to the approval of the state board of examiners, fix their compensation within the appropriation fixed therefor.

2. Oversee and secure the individual treatment and personal care of each and every patient in the sanitarium while resident therein, and keep a proper oversight of all the inhabitants thereof.

3. Have the general superintendence of the buildings and grounds, with their furnishing and fixtures, and the selection and control of all persons employed in and about the same.

4. Give from time to time such orders and instructions as he may deem best calculated to induce good conduct, fidelity, and economy in any department for the treatment of patients.

5. Maintain a salutary discipline among all employees, patients, and inmates of the sanitarium, and enforce strict compliance with his instructions and obedience to all the rules and regulations of the sanitarium. He shall, under the supervision and control of the executive board, discharge such patients as are sufficiently restored to health.

6. Cause full and fair accounts and records of the conditions and prospects of the patients to be kept regularly from day to day, in books provided for that purpose; and see that such accounts and records shall be in condition to be fully and properly inspected by the executive board at each regular meeting thereof; and that the principal facts and results, with a report thereon, shall be presented to the executive board at each regular meeting of said board.

7. Conduct the official correspondence of the sanitarium, and keep a record or copy of letters written and files of all letters received.

8. Prepare and present to the executive board annually, at the first quarterly meeting in each year, a true and perfect inventory of all the personal property and effects belonging to the sanitarium, and account when required by the board, for the careful keeping and economical use of all furnishings, stores, and other articles furnished for the sanitarium.

History: En. Sec. 7, Ch. 125, L. 1911;
re-en. Sec. 1517, R. C. M. 1921.

80-208. (1518) Secretary and treasurer. The executive board shall appoint a secretary of said board, who may also act as treasurer, and who may or may not be a member of said executive board, and such secretary and treasurer shall give bond with good and sufficient sureties for the faithful performance of his duties as such, and for the faithful accounting for and paying over to and for the use of said institution of moneys received by him as treasurer. Said bond shall run to the state of Montana, and shall be in such sum as may be designated by the state board of examiners, and when executed shall be approved by the said state board of examiners. The treasurer of the executive board shall be the treasurer of the institution.

The duties of the secretary and treasurer shall be such as are usually performed by such officers, or which may be designated by the state board of examiners.

History: En. Sec. 8, Ch. 125, L. 1911;
re-en. Sec. 1518, R. C. M. 1921.

80-209. (1519) Medical assistants and examining physicians. All medical assistants shall be appointed by the executive board. No medical assistant shall be appointed who is not a well-educated physician, legally qualified to practice medicine in Montana, and with an experience of at least two years in the actual practice of his profession, including at least one year's actual experience in a general hospital. The executive board shall also appoint, in all of the first, second and third-class cities of the state, reputable physicians, citizens of the state of Montana, who shall examine all persons applying for admission to said sanitarium for treatment. There shall be not less than one nor more than four such examining physicians appointed in cities of the first class, and not more than two in cities of the second and third class. Said examining physicians shall have been in the regular practice of their profession for at least five years, and shall be skilled in the diagnosis and treatment of diseases. Their fee or compensation, for each patient examined, shall not exceed three dollars.

History: En. Sec. 9, Ch. 125, L. 1911;
re-en. Sec. 1519, R. C. M. 1921.

80-210. (1520) Admission of patients to sanitarium—soldiers, sailors and marines. (1) The executive board of said sanitarium is hereby given power and authority to receive therein patients who have no ability to pay, but no person shall be admitted to the sanitarium who has not been a citizen of this state for at least one year, excepting that a female who has been a resident of the state for at least five months preceding the date of the application may be admitted, though not a citizen. Every person desiring free treatment in said sanitarium shall apply to the local authorities of his or her

town, city or county, having charge of the relief of the poor, who shall thereupon issue a written request to the president of said sanitarium for the admission and treatment of such person. Such request shall state in writing whether the person is able to pay for his or her care and treatment while at the sanitarium, which request and statement shall be kept on file by the president in a book kept for that purpose in the order of their receipt by him.

(2) No person shall be admitted as a patient in said institution without certificate of an examining physician, certifying that such applicant is suffering from tuberculosis, or what is commonly called miner's consumption, and, if upon the reception of a person at such sanitarium, it is found by the authorities thereof that he or she is not suffering from tuberculosis or miner's consumption, he or she shall be returned to the place of his or her residence, and the expenses of transportation to and from the sanitarium shall be paid by the county of which he or she is a resident. Admissions to said sanitarium shall be made in the order in which the names of applicants shall appear upon the application book to be kept as above provided by the president of said sanitarium, in so far as such applicants are subsequently certified by the said examining physician to be suffering from tuberculosis or miner's consumption; provided, however, that where the next patient in order is a man and the only accommodations available in the sanitarium are for women or children, then women or children shall be admitted in their proper order and vice versa. Every person who is declared, as herein provided, to be unable to pay for his or her care and treatment, shall be transported to and from the sanitarium at the expense of said local authorities, and cared for, treated and maintained therein at the expense of the county or municipality which would otherwise be chargeable with the support of such poor or indigent persons, and the expense of transportation, treatment, maintenance and actual cost of articles of clothing furnished by the sanitarium to such poor and indigent persons, shall be a county or town charge, as the case may be; provided, further, that any soldier, sailor or marine, who has served in the army or navy of the United States, and was at the time thereof a citizen or had established his residence in the state of Montana, who on discharge therefrom is found to be suffering from tuberculosis, and whose admission to the Montana state tuberculosis sanitarium is requested by the proper federal authorities, shall be entitled to be admitted thereto, and shall be classed for the purpose of admission on the same basis as free patients, and all such soldiers, sailors or marines shall be given priority for entrance thereto over other applicants in the order in which their applications for admittance are received and filed.

The treasurer of the sanitarium shall collect and receive any sum or sums the federal government may allow or pay for such purpose, and shall pay the same over to the state treasurer.

History: En. Sec. 10, Ch. 125, L. 1911; amd. Sec. 1, Ch. 26, Ex. L. 1919; re-en. Sec. 1520, R. C. M. 1921; amd. Sec. 1, Ch. 4, L. 1927.

Hospitals 5; Paupers 48.

41 C.J.S. Hospitals § 7; 48 C.J. Paupers § 246 et seq.

80-211. (1521) Private patients. Applicants for admission to this institution who are able to pay for their care and treatment are not required to obtain a written request from the local authorities having charge of the relief of the poor, but shall apply in person to the president, who shall enter the

name of such applicant in the book to be kept by him for that purpose, as provided in the preceding section, and when there is room in said sanitarium for the admission of such applicant, without interfering with the preference in the selection of patients, which shall always be given to the indigent, such patient shall be admitted to the sanitarium upon the certificate of one of the examining physicians, which certificate shall be kept on file by the president.

History: En. Sec. 11, Ch. 125, L. 1911; Hospitals 5.
re-en. Sec. 1521, R. C. M. 1921. 41 C.J.S. Hospitals § 7.

80-212. (1522) Support of free patients—payment. At least once in each month the president of the sanitarium shall furnish the executive board and to the local authorities of each county, city or town, as the case may be, having charge of the relief of the poor, a list of all the free patients in the sanitarium that are credited each respective county, city or town, and who are shown by the statement of such local authorities to be unable to pay for their care, treatment and maintenance, under the provisions of section 80-210. He shall accompany each such list with a bill of charges for care, treatment and maintenance at a rate not exceeding one dollar per day for each such free patient, together with items of expense of transportation, fee of the examining physician and the actual cost of articles of clothing furnished by the sanitarium to each such free patient. The treasurer of the sanitarium shall thereupon collect from the local authorities of the county, city or town, such sums as may be due therefrom, and pay the same over to the state treasurer.

History: En. Sec. 12, Ch. 125, L. 1911;
amd. Sec. 1, Ch. 186, L. 1921; re-en. Sec.
1522, R. C. M. 1921.

80-213. (1523) Support of private patients. The executive board shall have power and authority to fix the charges to be paid by patients who are able to pay for their care and treatment in said sanitarium, or who have relatives bound by law to support them who are able to pay therefor.

History: En. Sec. 13, Ch. 125, L. 1911;
re-en. Sec. 1523, R. C. M. 1921.

80-214. (1524) State board of examiners. The state board of examiners of the state of Montana shall have power, and it shall be its duty:

1. To have the general control and supervision of the sanitarium, and to provide, subject to the laws of the state, rules and regulations for the government of its affairs.

2. To adopt rules and regulations, not inconsistent with the constitution or laws of this state, for its government, and proper and necessary for the execution of the powers and duties conferred upon it by law.

3. To fix the compensation of the president and other employees of the institution.

4. To confer upon the president and executive board of said institution such authority relative to the immediate control and management, other than financial, and the selection of employees, as may be deemed expedient and for the best interests of said institution.

5. To have supervision and control of all expenditures of all moneys appropriated or received for the use of said institution from all sources,

and said state board of examiners shall have power to select and to approve plans for buildings, let contracts, approve all bonds for any and all buildings and improvements, and shall audit all claims to be paid from any moneys, but said state board of examiners shall have authority to confer upon the executive board of said institution such power and authority in contracting current expenses, and in auditing, paying, and reporting bills for salaries or other expenses incurred in connection with said institution, as may be deemed by said board of examiners to be for the best interests of said institution.

History: En. Sec. 14, Ch. 125, L. 1911;
re-en. Sec. 1524, R. C. M. 1921.

80-215. (1525) Donations, to whom made. All donations, grants, gifts, or devises made to said institution shall be made in its legal name, and if made to any officer or board of said institution, the same shall be immediately transferred by such officer or board to said institution.

History: En. Sec. 15, Ch. 125, L. 1911;
re-en. Sec. 1525, R. C. M. 1921.

80-216. Grant of land for federal tuberculosis sanitarium for Indians authorized. The state board of examiners of the state of Montana is hereby authorized, empowered and directed, for and on behalf of, and in the name of the state of Montana, to grant to the United States of America a tract of land, not to exceed two (2) acres in area, out of lands owned by the state of Montana, at or adjacent to the Montana State tuberculosis sanitarium near Galen in Deer Lodge County, Montana, to be accepted and used by the United States of America, through the proper department, administration, agency or instrumentality thereof, as a site for the erection thereon of a federal hospital and sanitarium for the treatment of Montana Indians suffering or threatened with tuberculosis and allied afflictions.

History: En. Sec. 1, Ch. 76, L. 1947.

80-217. Grant—condition. The particular acreage shall be selected by agreement between said board for the state, and the department of the interior of the United States for the federal government, and the grant shall be evidence by a formal deed of grant made and executed in the name of the state of Montana, by said board and its members, and duly acknowledged, and the same shall be delivered to the United States when the erection of said federal hospital is lawfully authorized, but said deed of grant shall be upon the express condition subsequent that the title conveyed by said grant shall revert to the state of Montana if the said federal hospital and sanitarium is not erected within five (5) years from the date of delivery of said deed of grant, provided, further, that at any time the United States of America abandons the hospital and sanitarium or ceases to use the same for such purpose as set forth in this act for a period of two (2) years, the title conveyed by said grant, shall revert to the state of Montana, and provided, further, that the style of architecture of any building constructed on said land shall be approved by the state board of examiners.

History: En. Sec. 2, Ch. 76, L. 1947.

CHAPTER 3

SOLDIERS' HOME

Section	80-301.	Governor empowered to accept national aid.
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	80-321.	Chaplain.
	80-322.	Reversion to soldiers' home of money left by deceased members and not claimed by heirs.

80-301. (1526) Governor empowered to accept national aid. The governor is hereby empowered and directed to accept for the state the conditions imposed by an act of Congress entitled "An act to provide aid to state, or territorial homes for the support of disabled soldiers and sailors in the United States," approved August 27, 1888. He is further directed to send to the president of the board of managers of the national home for disabled volunteer soldiers a copy of all laws bearing upon the establishment, regulation, and maintenance of the soldiers' home at Columbia Falls, Montana, with all printed regulations relating to the management of said home, together with a copy of this and the next section.

History: En. Sec. 1, p. 93, L. 1897; Army and Navy 52.
 re-en. Sec. 1281, Rev. C. 1907; re-en. Sec. 6 C.J.S. Army and Navy § 62.
 1526, R. C. M. 1921.

80-302. (1527) Auditor authorized to receive and disburse moneys. The state auditor is hereby empowered and directed to receive and receipt for any and all moneys that may become due the state by reason of said act of congress, and to turn the same into the state treasury for the use and benefit of the state soldiers' home, to be disbursed and accounted for in the same manner as other money appropriated out of the state treasury for the maintenance of said home.

History: En. Sec. 1, p. 93, L. 1897; Army and Navy 52.
 re-en. Sec. 1282, Rev. C. 1907; re-en. Sec. 6 C.J.S. Army and Navy § 62.
 1527, R. C. M. 1921.

80-303. (1528) Soldiers' home established. There is hereby established in this state a soldiers' home, the object of which shall be to provide home and subsistence to honorably discharged soldiers, sailors, and marines who have served in the United States army or navy, and who have become unable to earn a livelihood by reason of such service, or from age or otherwise.

History: En. Sec. 2510, Pol. C. 1895; re-en. Sec. 1283, Rev. C. 1907; re-en. Sec. 1528, R. C. M. 1921.

References

Cited or applied as section 1283, revised codes, in *In re Beek's Estate*, 44 M 561, 584, 121 P 784, 1057.

NOTE.—Changed by code commissioner of 1921, to conform to later enactments.

80-304. (1529) Board of managers. The general supervision and government of said home shall be vested in a board of managers, to consist of five members, one of whom shall be the department commander of the Grand Army of the Republic of the state of Montana, or in case the office of department commander of the Grand Army of the Republic of the state of Montana shall be at any time abandoned or discontinued then the department commander of the Spanish American War Veterans of the state of Montana for the time being shall be a member of the board, and the remaining four shall be appointed by the governor, by and with the advice and consent of the senate. Of the four members so appointed as aforesaid, two shall hold their office for the term of four years and two for the term of two years respectively, and until their successors are appointed and qualified. The governor, at the time of the making of the said appointments, shall designate the period for which each member is appointed, and thereafter every two years the governor shall appoint two members of said board of managers, who shall hold their office for the term of four years, and until their successors are appointed and qualified. The governor shall have the power to remove any member of the board for inefficiency or other good and sufficient cause, and in case of any vacancy in said board by death or otherwise, the governor shall appoint a suitable person to fill the vacancy for the unexpired term. No less than three members of said board of managers shall be ex-soldiers or sailors of the United States, and one of the board shall be a regular practicing physician, duly licensed under the laws of the state of Montana.

History: En. Sec. 2511, Pol. C. 1895; 1529, R. C. M. 1921; amd. Sec. 1, Ch. 149, re-en. Sec. 1284, Rev. C. 1907; re-en. Sec. L. 1925.

80-305. (1530) Oath and bond of managers. Before entering upon his duties each member of the board of managers shall take the oath prescribed by law, and shall execute to the state of Montana a bond in the penal sum of one thousand dollars, to be approved by the governor and filed in the office of the secretary of state, conditioned for the faithful performance of his duties and the honest and faithful disbursement of and accounting for all moneys and property which may come into his hands as such manager.

History: En. Sec. 2512, Pol. C. 1895; Ch. 20, L. 1911; re-en. Sec. 1530, R. C. M. re-en. Sec. 1285, Rev. C. 1907; amd. Sec. 1, 1921.

80-306. (1531) Meeting—organization—officers. As soon as practicable after the board of managers are appointed and qualified, and not later than the first Tuesday in May, 1895, and upon due notice given, the members of said board shall meet at the capital of the state and organize by electing one of their number president, and one of their number secretary and treasurer of said board, who shall hold their respective offices until the first Tuesday in May, 1896, and they shall be elected annually thereafter. The secretary and the treasurer shall keep a faithful record of all the transactions of the said board of managers and the books and records and ac-

counts pertaining to such soldiers' home, under such rules and regulations as may be established by said board, and shall receive such salary as said board may determine.

History: En. Sec. 2513, Pol. C. 1895; re-en. Sec. 1286, Rev. C. 1907; re-en. Sec. 1531, R. C. M. 1921.

80-307. (1532) Meetings of managers. The board of managers of the soldiers' home shall hold three regular meetings each year, to-wit: on the second Tuesday of March, July, and November in each year; and they may have special meetings, on the call of the president and one other member of the board, for the transaction of such business as may be stated in the call. Three members of the board shall constitute a quorum for the transaction of business.

History: En. Sec. 2514, Pol. C. 1895; Ch. 23, L. 1909; re-en. Sec. 1532, R. C. M. re-en. Sec. 1287, Rev. C. 1907; amd. Sec. 1, 1921.

80-308. (1533) Commandant—subordinate officers—salaries—discharge. The board of managers shall appoint a commandant of the soldiers' home, who shall receive a salary not to exceed two hundred dollars (\$200.00) per month, who shall be a resident of the state of Montana, and shall have served in the army or navy of the United States during the late war of the rebellion or in the Spanish-American War, or in the World War, and shall have received an honorable discharge therefrom.

80-308
(1533 RCM'35)
Amended
SL. '49, C. 82
Sec. 2, P. 170

They shall formulate and publish all necessary rules and regulations to be reasonably and impartially enforced by the commandant of the home, subject to appeal to the board of managers.

All subordinate officials and employees of the home shall preferably be selected from residents of the state who have served in the army or navy of the United States and have been honorably discharged therefrom.

The salaries of the commandant and all subordinate officials and such other employees as may be necessary shall be fixed by said board of managers; provided, that the compensation so paid shall in no case exceed such reasonable and necessary compensation as is paid for like services in similar institutions.

Any such subordinate official or employee may be suspended or discharged by such commandant for inefficiency or misconduct and a statement of the case shall be reported to the said board, who shall upon application offer such official or employee a hearing, and the action thereon of the board shall be final.

History: En. Sec. 2515, Pol. C. 1895; re-en. Sec. 1288, Rev. C. 1907; amd. Sec. 2, Ch. 23, L. 1909; re-en. Sec. 1533, R. C. M. 1921; amd. Sec. 1, Ch. 126, L. 1925; amd. Sec. 1, Ch. 156, L. 1931.

tion insofar as it authorized the board of managers of the soldier's home to fix the salaries of the officials and members of such home. Opinions of Attorney General Vol. 19, No. 112. (See also Ch. 30, L. 1943, sections 59-901 and 59-902.)

NOTE.—This section held a violation of section 20, article VII of the constitu-

80-309. (1534) Records. The board of managers shall keep a record of the proceedings of all regular and special meetings, as well as a full and complete account of all moneys or other property received by them, or that have come under their control, from any source whatsoever; a detailed and

itemized account of all the expenses; the names, places of birth, full record of service in the army or navy of persons admitted, and the last place of residence before such admissions; all deaths, discharges, and removals, with the cause thereof; and the names of persons making donations to the home, with a description of the same. They shall on or before the first day of December in each year transmit to the governor of the state a report in writing containing a detailed statement of the transactions of the board, and a full account of the receipts and expenditures of said home for the preceding year, together with such suggestions as they may see fit to make for the future usefulness of said home.

History: En. Sec. 2516, Pol. C. 1895;
re-en. Sec. 1289, Rev. C. 1907; re-en. Sec.
1534, R. C. M. 1921.

80-310. (1535) Who are eligible to admission. Any soldier, sailor, or marine, who served in the army or navy of the United States during the late Civil war, or in the Mexican war, or during any troubles between the United States and the government of Mexico, or the people of Mexico, or in the late war with Spain, or in any insurrection in the Philippine Islands, or during the Boxer troubles with China, or who, within the borders of the territory of Montana, served in the Sioux war of 1875 or the Nez Perce war of 1877, or any person who served with the United States army in the campaign of 1890 and 1891 against the Sioux and Cheyenne Indians or other Indian campaigns within the borders of the state of Montana, or during the war with Germany and Austria, or who served in Russia, Siberia, or any other foreign country during the war with Germany and Austria, or any person who served in any branch of the military service of the United States during the current World War, known as World War II, or who while a citizen of the United States, served in the army or navy, or other branch of the military establishment of any of the allies of the United States and has returned to and lives in Montana, or during any troubles arising or growing out of any such war or wars, and has received honorable discharge therefrom, who at the time of admission is an invalid by reason of disease contracted, wounds received, old age, or by reason of other disability, and who has become unable to earn a livelihood by reason thereof, shall be eligible to admission to the benefits of the home under the rules and regulations prescribed by the board of managers thereof, on the certificate of disability by a county commissioner and the county physician of the county in which the applicant may reside; and the transportation of such applicant to said soldiers' home shall be a proper county charge, and be paid by said county if the applicant is unable to pay the same; provided, that the benefits of said home shall not be extended to anyone who has not resided within the state of Montana for a period of one (1) year next preceding the date of his application, or to anyone who has not resided within the county from which he asks to be sent to the home for the period of three (3) months from the date of his application, nor to anyone convicted of a felony or of a crime involving moral turpitude, nor shall anyone who has been an habitual drunkard be received without sufficient evidence of subsequent good conduct and reformation of character as may be satisfactory to the said board of managers; provided, further, that in case said soldiers' home shall not

have the capacity to receive all persons designated here, that veterans of the Civil war shall have preference as to admission.

History: En. Sec. 1, p. 50, L. 1899; 1919; re-en. Sec. 1535, R. C. M. 1921; amd. re-en. Sec. 1290, Rev. C. 1907; amd. Sec. 1, Sec. 1, Ch. 60, L. 1931; amd. Sec. 1, Ch. Ch. 93, L. 1913; amd. Sec. 1, Ch. 41, L. 81, L. 1945.

80-311. (1536) Admission of wives or widows. The board of managers of the soldiers' home is authorized and empowered to admit to the privileges of the home under such rules as the board may prescribe, the wives or widows of soldiers, sailors or marines who are inmates or who may be or may have been eligible to admission as inmates and who were married to such soldiers, sailors or marines; provided that no woman be admitted who has not attained the age of fifty (50) years.

History: En. Sec. 1, Ch. 87, L. 1903; 1921; amd. Sec. 2, Ch. 126, L. 1925; amd. re-en. Sec. 1292, Rev. C. 1907; amd. Sec. Sec. 1, Ch. 12, L. 1935.
1, Ch. 93, L. 1913; re-en. Sec. 1536, R. C. M.

80-312. (1537) Proposals for site—conditions of donation. It shall be the duty of the said board of managers at its first meeting to give notice in at least three newspapers of general circulation in the state of Montana, once a week for three consecutive weeks, that they will for a definite period and not less than thirty days from the date of said notice, receive proposals for a donation of lands for a location of said home, and of money to erect buildings thereon, and any other donation to aid the building, furnishing, or maintaining of said home; and at the expiration of the period named in said notice it shall be their duty to meet and consider any proposals which may be submitted, and to examine such of the proposed sites as in their judgment will be best suited for a site for said home; and from the places so proposed they shall make a selection and make report thereof to the governor, and if he shall approve the same, then the site so selected shall become the permanent site of the soldiers' home of the state of Montana; provided, that the said board of managers may reject any and all proposals submitted to them, if in their judgment the best interests of the state are subserved thereby; and provided, further, that no proposals shall be considered by the board that does not contemplate the giving to the state of Montana in fee, for the purpose of a site for said soldiers' home, at least forty acres of good tillable land, with water-right appurtenant thereto sufficient to irrigate the same if such irrigation be necessary in the cultivation of such land.

History: En. Sec. 2518, Pol. C. 1895;
re-en. Sec. 1292, Rev. C. 1907; re-en. Sec.
1537, R. C. M. 1921.

80-313. (1538) Board may accept donations. Said board of managers shall have the power, on behalf of the state, to accept donations of land, money, or other valuables by gift, bequest, or otherwise. All titles to land and improvements thereon shall be vested in the name of the state for the use of said soldiers' home, so long as the same may be necessary, to revert to the state when the necessity for such home no longer exists.

History: En. Sec. 2519, Pol. C. 1895; **References**
re-en. Sec. 1293, Rev. C. 1907; re-en. Sec. Cited or applied in In re Beck's Estate,
1538, R. C. M. 1921. 44 M 561, 584, 121 P 784, 1057.

80-314. (1539) Office of board. The principal office of said board of managers, and place of holding all regular meetings, shall at all times after the erection thereof be located at the soldiers' home.

History: En. Sec. 2520, Pol. C. 1895;
re-en. Sec. 1294, Rev. C. 1907; re-en. Sec.
1539, R. C. M. 1921.

80-315. (1540) Compensation of managers. Said board of managers shall receive as compensation for their services the sum of five dollars per day and their actual traveling expenses incurred while attending the meetings, or in attending to the transaction of any business by and under the direction of the said board of managers.

History: En. Sec. 3, Ch. 23, L. 1909;
re-en. Sec. 1540, R. C. M. 1921.

80-316. (1541) Insane inmates. In case any member of the Montana soldiers' home shall become insane, and shall be so adjudged according to the law, and shall be sent to any one of the asylums for the insane, such insane inmate shall not thereby lose his connection with said Montana soldiers' home; and the proper officer of said soldiers' home shall draw from the general government any proportion of the cost of maintaining such insane inmate to which such said soldiers' home is entitled by law.

History: En. Sec. 2524, Pol. C. 1895;
re-en. Sec. 1298, Rev. C. 1907; re-en. Sec.
1541, R. C. M. 1921.

80-317. (1542) How money drawn from treasury. The method of drawing money from the state treasury and accounting for the same shall be similar to that now in force with other state institutions, as prescribed by the general law.

History: En. Sec. 2525, Pol. C. 1895; States \hookrightarrow 123.
re-en. Sec. 1299, Rev. C. 1907; re-en. Sec. 59 C.J. States § 376 et seq.
1542, R. C. M. 1921.

80-318. (1543) Inspection. Said soldiers' home shall at all times be subject to the inspection of the board of managers of the national home for disabled volunteer soldiers.

History: En. Sec. 2526, Pol. C. 1895; Army and Navy \hookrightarrow 52.
re-en. Sec. 1300, Rev. C. 1907; re-en. Sec. 6 C.J.S. Army and Navy § 62.
1543, R. C. M. 1921.

80-319. (1544) Contracts. All contracts for the erection of buildings and supplies of whatsoever nature needed for said home shall be advertised and let by contract as provided by the laws of the state of Montana, and no member of the board or officer of the home shall be interested, directly or indirectly, in any contract or award made by the board, under penalty of forfeiture of office and fine in similar cases provided by the laws of Montana.

History: En. Sec. 2527, Pol. C. 1895; States \hookrightarrow 98.
re-en. Sec. 1301, Rev. C. 1907; re-en. Sec. 59 C.J. States § 296 et seq.
1544, R. C. M. 1921.

80-320. (1545) Inmates not required to assign pension. Any and all persons admitted inmates of the said home shall not assign to the home for

its support any of the pension they may receive from the general government.

History: En. Sec. 1, Ch. 18, L. 1903;
re-en. Sec. 1302, Rev. C. 1907; re-en. Sec.
1545, R. C. M. 1921.

80-321. (1546) Chaplain. The board of managers shall select and appoint a chaplain for the soldiers' home, who must be a regular ordained minister of the gospel and who shall hold divine services at the soldiers' home at least twice a month, and who shall also conduct the burial services upon the death of any of the inmates of the home, and shall be paid a salary of not to exceed twenty-five dollars (\$25.00) per month.

History: En. Sec. 1, Ch. 33, L. 1905; Ch. 30, L. 1909; re-en. Sec. 1546, R. C. M.
re-en. Sec. 1305, Rev. C. 1907; amd. Sec. 1, 1921; amd. Sec. 3, Ch. 126, L. 1925.

80-322. (1546.1) Reversion to soldiers' home of money left by deceased members and not claimed by heirs. Any money left on deposit with the Montana soldiers' home by a deceased member which is not claimed by his heirs in ten (10) years shall revert to the Montana soldiers' home, to be placed in a welfare fund to be expended under the direction of the board of managers. Any personal effects of any deceased member, after the expiration of one (1) year from the date of his death, may be given to living members or be sold by said board at a public sale, unless claimed by the executor, administrator, or other legal representative, of said deceased member within said one (1) year. Said board is authorized to give to any living member any clothing of said deceased member as such living member may require for his health or welfare. All personal effects of a deceased member heretofore accumulated or on hand or which may hereafter accumulate at said soldiers' home may be sold or given to living members as herein provided. If such personal effects are not so claimed within such time, said personal effects may be sold. Said board shall give notice of such sale to be held at such soldiers' home on a date to be fixed by the board and such sales shall be advertised in some newspaper of general circulation, published and circulated in Flathead county, Montana, and elsewhere if the board deems it advisable, in three consecutive weekly issues of said newspaper or newspapers, at least fifteen (15) days prior to said sale. The proceeds of said sale or sales shall be placed by said board in the deceased members fund at said soldiers' home in the name of such deceased member, and if not claimed by his heirs in ten (10) years, to revert to the Montana soldiers' home to be placed in a welfare fund to be expended under the direction of the board of managers.

History: En. Sec. 1, Ch. 59, L. 1935;
amd. Sec. 1, Ch. 57, L. 1945.

CHAPTER 4

FARMERS' INSTITUTES

- Section 80-401. Board of administration—composition and powers.
80-402. Expenses, how paid.
80-403. Meetings.
80-404. Appropriations.

80-401. (1576) Board of administration—composition and powers. The board of administration of the farmers' institute as provided for in this act, shall consist as follows: The governor of the state, the president of the Montana state college of agriculture and the commissioner of agriculture, labor and industry of the state of Montana, all of whom shall be ex officio members. Members of such board of administration shall be designated the "Directors of the Montana Farmers' Institute," and shall be authorized to hold institutes for the instruction of the citizens of this state in the various branches of farming and farm life, and shall prescribe such rules and regulations as they may deem best for organizing and conducting the same. Such institutes shall be held at such times and places as the directors may designate; provided the requirements of the board of administration have been complied with, such as county institute or local organizations providing a suitable hall, lighting and heating the same, and bearing the necessary advertising expense. The directors may employ an agent or agents to perform such work in organizing and conducting said institutes as they may deem best.

History: Ap. p. Sec. 1, p. 55, L. 1901; Agriculture 2.
amd. Sec. 1, Ch. 105, L. 1903; re-en. Sec. 3 C.J.S. Agriculture § 6.
1306, Rev. C. 1907; amd. Sec. 1, Ch. 8, L.
1909; amd. Sec. 1, Ch. 133, L. 1921; re-en.
Sec. 1576, R. C. M. 1921.

80-402. (1577) Expenses, how paid. The expense of such institute, or any expenditure made necessary in carrying out the provisions of this act, shall be paid out of such institute funds by the state treasurer upon warrants issued by the state auditor, which warrants shall only be drawn upon the certificate of the chairman of the board of administration of the Montana farmers' institute.

History: En. Sec. 4, p. 55, L. 1901; States 123.
re-en. Sec. 1308, Rev. C. 1907; re-en. Sec. 59 C.J. States § 376 et seq.
1577, R. C. M. 1921.

80-403. (1578) Meetings. Immediately upon the passage and approval of this act, the board of administration shall meet in the city of Helena and arrange for the first series of institutes throughout the state, and thereafter such board shall meet annually on the second Tuesday in September to arrange for such institutes, and they shall again meet on the second Tuesday in March of each year to audit all expenditures and arrange for the printing in pamphlet form, within sixty days of said meeting, of the "Institute Annual," and that the cost of said annual shall not exceed one thousand five hundred dollars in any one year.

History: En. Sec. 5, p. 56, L. 1901; 1309, Rev. C. 1907; re-en. Sec. 1578, R. C.
amd. Sec. 5, Ch. 105, L. 1903; re-en. Sec. M. 1921.

80-404. (1579) Appropriations. For the purpose mentioned in this act, the directors may use the sum as they may deem proper, not exceeding the sum of four thousand dollars per annum, and that until otherwise provided by law the state treasurer shall pay, out of any money in the state treasury not otherwise appropriated, a sum not to exceed four thousand dollars during each fiscal year hereafter, on the order of the said board of directors. Each institute held under the authority of this act shall be

entitled to a sum not exceeding fifty dollars from the amount appropriated under this act.

History: En. Sec. 2, Ch. 105, L. 1903;
re-en. Sec. 1310, Rev. C. 1907; re-en. Sec.
1579, R. C. M. 1921.

CHAPTER 5

MONTANA STATE FAIR

- Section 80-501. Establishment of state fair.
80-502. Objects and purposes—time for holding.
80-503. Control of state fair.
80-504. Custody of fair property—letting of privileges.
80-505. Location of state fair.

80-501. (1580) Establishment of state fair. For the promotion of the public welfare and in order to give prominence and publicity to the resources of the state of Montana, there is hereby established a state institution to be known and designated as "The Montana State Fair."

History: En. Sec. 1, Ch. 47, L. 1911;
re-en. Sec. 1580, R. C. M. 1921.

NOTE.—The Montana state fair was created by chapter 96, laws of 1903; appearing as sections 1311 to 1322, revised codes of 1907. The law is here given as amended by chapter 47, laws of 1911.

Cross-References

Accounting, sec. 82-102.
Appropriation by counties for exhibits,
sec. 16-1407.
Management by department of agri-
culture, sec. 3-107.

Agriculture \hookrightarrow 5.
3 C.J.S. Agriculture § 14.

80-502. (1581) Objects and purposes—time for holding. The objects and purposes of said institution shall be to encourage the location and settlement of the public lands within this state, and to encourage immigration and capital in aid of the further development of our natural resources; and to better disseminate knowledge concerning the growth, prosperity, and possibilities of agriculture, stock raising, horticulture, mining, mechanic arts, and industrial pursuits in this state. To this end the management of said institution shall provide an annual state fair or exposition of all said enumerated products, which fair shall be conducted for a period of not more than two (2) weeks as the management may designate, between the fifteenth day of August and the fifteenth day of October of each year; the state purchasing agent for the department of agriculture, if either enters into any agreement concerning the use, repairing or occupancy of the Montana state fair grounds, shall insure the fact that no liability of any kind or nature shall attach to the state of Montana through said use or occupancy and further provide that the state of Montana shall in no way be obligated for any costs or expenses of any manner or kind, incident to or arising out of the holding of "The Montana State Fair."

History: En. Sec. 2, Ch. 47, L. 1911;
re-en. Sec. 1581, R. C. M. 1921; amd. Sec.
1, Ch. 7, L. 1943; amd. Sec. 1, Ch. 142, L.
1947.

NOTE.—The effective date of the
amendment to this section is Mar. 15,
1949, according to Sec. 2, Ch. 142, L. 1947.

80-503. (3640) Control of state fair. The department of agriculture, labor, and industry, through the division of labor and publicity, shall have entire charge and control of the Montana state fair, and it shall be its duty

to cause the holdings of said fair in the manner provided by sections 80-501 and 80-502.

History: En. Sec. 61, Ch. 216, L. 1921;
re-en. Sec. 3640, R. C. M. 1921.

Agriculture—5.

3 C.J.S. Agriculture § 14.

2 Am. Jur. 447, Agriculture, § 53.

Power of county or municipality to exempt from taxation or otherwise aid or subsidize private enterprises conducted for recreational, exhibition, or entertainment purposes. 116 ALR 889.

Liability for injury inflicted by animal exhibited at show. 129 ALR 431.

80-504. (3643) Custody of fair property—letting of privileges. During the time when such Fair is being held and during such times immediately preceding and following the holding of the same as may be necessary and required to prepare for such fair and to dismantle the same, and which times shall be fixed and designated by the state board of examiners the commissioner of agriculture shall have the care and custody of all the property belonging to the state fair, and shall be entrusted with the direction and administration of all of its business and affairs and shall adopt and enforce all necessary rules for the conduct and management of the fair and for the regulation of its officers and employees. At all other times the state purchasing department or division shall have the care, custody and control of all of the property belonging to the state fair.

History: En. Sec. 64, Ch. 216, L. 1921;
re-en. Sec. 3643, R. C. M. 1921; amd. Sec.
2, Ch. 7, L. 1943.

80-505. (3644) Location of state fair. The state fair shall be permanently located on the present grounds now owned by the state and devoted to that purpose, located north of the city of Helena, in Lewis and Clark county, and such additional lands as may hereafter be obtained in connection therewith are hereby dedicated for the use of the Montana state fair.

History: En. Sec. 65, Ch. 216, L. 1921;
re-en. Sec. 3644, R. C. M. 1921.

CHAPTER 6

STATE BUREAU OF CRIMINAL IDENTIFICATION

- Section 80-601. Creation of state bureau of criminal identification.
80-602. Bureau shall be supplied with equipment.
80-603. Duties of superintendent of bureau.
80-604. Duty of officers to take finger prints of persons arrested for felony—forwarding records to superintendent—withholding salary for violation of duty—comparison of information—index of identification.
80-605. System, interstate, national and international to be developed.
80-606. Instruction to be given local bureaus.
80-607. Criminals not permitted access to files.
80-608. Appropriations for bureau to be made by legislature.

80-601. (12465.1) Creation of state bureau of criminal identification. There is hereby created under the authority and supervision of the warden of the Montana state prison a state bureau of criminal identification and investigation to be located at Deer Lodge, Montana. Upon the taking effect of this act, the warden of the Montana state prison, with the approval of the governor, shall appoint a well qualified person as superintendent of said bureau.

History: En. Sec. 1, Ch. 151, L. 1931. States~~45~~.
59 C.J. States § 143½.

80-602. (12465.2) Bureau shall be supplied with equipment. The bureau shall be supplied with such furniture, fixtures, apparatus and materials as may be necessary for the collection, filing and preservation of all criminal records filed with the bureau.

History: En. Sec. 2, Ch. 151, L. 1931. Criminal Law~~1222~~.
24 C.J.S. Criminal Law § 2008 et seq.

80-603. (12465.3) Duties of superintendent of bureau. The superintendent shall procure and file for record photographs, pictures, descriptions, finger prints, measurements and such other information as may be pertinent, of all persons who have been or may hereafter be convicted of felony within the state, and of all well-known and habitual criminals from wherever procurable, and it shall be the duty of the person in charge of any state institution to furnish any such material to the superintendent of the state bureau of criminal identification upon request of the superintendent. The superintendent shall cooperate with and assist sheriffs, chiefs of police and other law officers in the establishment of a complete state system of criminal identification and in obtaining finger prints and other means of identification of all persons arrested on charge of felony. He shall also file for record the finger print impressions of all persons confined in any work-house, jail, reformatory, or penitentiary, for the violation of state laws, and such other information as he may receive from law enforcement officials of the state and its subdivisions.

History: En. Sec. 3, Ch. 151, L. 1931.

80-604. (12465.4) Duty of officers to take finger prints of persons arrested for felony—forwarding records to superintendent—withholding salary for violation of duty—comparison of information—index of identification. It is hereby made the duty of the sheriffs of the several counties of the state, the chiefs of police of the cities and marshals of villages therein immediately upon the arrest of any person for any felony, to take his finger prints according to the finger print system of identification on the forms furnished by the superintendent, and forward the same, together with such other description as may be required and with the history of the offense committed, to the bureau to be classified and filed, but should any accused be found not guilty of the offense charged, then said finger prints and description shall be given to the accused upon his request. The superintendent of the state bureau of criminal identification shall report any dereliction in the performance of his duty by any sheriff, chief of police, or marshal, or any dereliction in the duty imposed upon any person having charge of any state institution as provided in section 80-603 to the governor, who shall make immediate investigation thereof, and upon the order of the governor the proper disbursing officer shall not issue any salary voucher to any said official found by the governor to be derelict in the performance of the duties provided by this enactment until such dereliction has been corrected. The superintendent shall compare the description received with those already on file in the bureau, and if he finds that the person arrested has a criminal record or is a fugitive from justice, he shall at once inform the arresting officer of such fact; and in

order to facilitate the work of identification, the name or names under which each person whose identification is thus filed is known, shall be alphabetically indexed by the superintendent.

The provisions of this section shall not apply to violators of city ordinances or those arrested for misdemeanors.

History: En. Sec. 4, Ch. 151, L. 1931.

14 Am. Jur. 856, Criminal Law, § 133.
Fingerprints as evidence. 16 ALR 370.
Right to take fingerprints and photo-

graphs of accused before trial, or to retain same in police record after acquittal or discharge of accused. 83 ALR 127.

Fingerprinting as violation of right or privacy. 138 ALR 89.

80-605. (12465.5) System, interstate, national and international to be developed. It shall be the duty of the superintendent to cooperate with the bureaus in other states and with the national bureau of the department of justice in Washington to develop and carry on a complete interstate, national and international system of criminal identification and investigation.

History: En. Sec. 5, Ch. 151, L. 1931.

80-606. (12465.6) Instruction to be given local bureaus. It shall be the duty of the superintendent to afford assistance and, when practicable, instruction to sheriffs, chiefs of police and other law officers in the establishment of efficient local bureaus of identification in their districts and in making them proficient in procuring finger print records.

History: En. Sec. 6, Ch. 151, L. 1931.

80-607. (12465.7) Criminals not permitted access to files. A person with a known criminal record shall not be permitted access to the files of the bureau.

History: En. Sec. 7, Ch. 151, L. 1931.

80-608. (12465.8) Appropriations for bureau to be made by legislature. The state legislature shall make the necessary appropriation for the purpose of paying the expenses necessary to carry into effect and operation the said bureau and to maintain and operate the same.

History: En. Sec. 8, Ch. 151, L. 1931.

CHAPTER 7

THE STATE PRISON

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- 80-746. Reports of warden and board.
- 80-747. State prison fund.
- 80-748. Compensation of sheriffs.
- 80-749. Duties of board—clerk.

80-701. (12434) Board of state prison commissioners. The board of state prison commissioners consists of the governor, the secretary of state, and attorney-general, and has such supervision of all matters connected with the state prison as is provided for in this chapter.

History: En. Sec. 2950, Pen. C. 1895; re-en. Sec. 9716, Rev. C. 1907; re-en. Sec. 12434, R. C. M. 1921. See Cal. Pen. C., Secs. 1572-1596, for sections corresponding to this chapter.

Sheriff's mileage for delivery of prisoners, sec. 16-2723.

References

Cited or applied as section 9716, Revised Codes, in *Stephens v. Conley*, 48 M 352, 365, 138 P 189.

Cross-References

Railroad rates for transporting prisoners, sec. 72-144.

Prisons 6.
50 C.J. Prisons § 11 et seq.

80-702. (12435) Board has control of grounds, etc. The board of state prison commissioners has full control of the state prison grounds, buildings, prison labor and prison property; has power to purchase or cause to be purchased, all needed commissary supplies, all raw material and tools necessary for any manufacturing purposes carried on at said prison; and to sell all manufactured articles, and collect the money for the same. The board has power to make all needful rules and regulations in regard to the management of the prison, the discipline of the convicts and the conduct and compensation of the guards and assistants.

History: En. Sec. 2951, Pen. C. 1895;
re-en. Sec. 9717, Rev. C. 1907; re-en. Sec.
12435, R. C. M. 1921.

References

State v. District Court, 85 M 215, 221,
278 P 122.

Prisons \Rightarrow 4.

50 C.J. Prisons § 10.

80-703. (12436) Officers of board. The governor is the president, and the secretary of state secretary of the board; and any two thereof are a quorum, with full power to transact any business that may be required of such board.

History: En. Sec. 2952, Pen. C. 1895;
re-en. Sec. 9718, Rev. C. 1907; re-en. Sec.
12436, R. C. M. 1921.

80-704. (12437) Duty of secretary. It is the duty of the secretary to keep, or cause to be kept, a full and complete account in a book or books to be kept for that purpose, of all the transactions and proceedings of the board.

History: En. Sec. 2953, Pen. C. 1895;
re-en. Sec. 9719, Rev. C. 1907; re-en. Sec.
12437, R. C. M. 1921.

Prisons \Rightarrow 9.

50 C.J. Prisons § 27.

80-705. (12438) Warden—appointment, salary and removal. A warden of the state prison shall be appointed by the governor, and such appointment must be transmitted to and approved by the senate. The tenure of office of the appointee shall be for a period of four years from the date of appointment and until his successor has been appointed and qualified. The salary of the warden is hereby fixed at the sum of four thousand dollars per year, payable in monthly instalments of three hundred thirty-three and 33/100 dollars each, at the end of each and every month. The warden shall be subject to removal by the state board of prison commissioners at any time for misfeasance, nonfeasance, or malfeasance in office, but before he is so removed formal charges in writing must be preferred and the warden given opportunity to appear and defend himself against any such charges. When charges shall have been preferred, asking the removal of the warden, notice of the time and place of hearing of said charges shall be served upon him at least five days prior to the day set for the hearing; provided, however, that when such charges have been preferred, the state board of prison commissioners shall have the power and authority to suspend the warden until after the determination of the charges preferred against him.

History: En. Sec. 2954, Pen. C. 1895;
re-en. Sec. 9720, Rev. C. 1907; amd. Sec.
1, Ch. 11, L. 1913; re-en. Sec. 12438, R. C.
M. 1921.

District Court, 43 M 571, 577, 118 P 268;
Stephens v. Conley, 48 M 352, 363, 138 P
189.

Warden is a Public Officer

The warden of the state penitentiary is
a public officer. State ex rel. Stephens v.

Prisons \Rightarrow 7, 8.

50 C.J. Prisons § 12 et seq.

Court's power to remove jailer from
office. 118 ALR 174.

80-706. (12439) Duties of warden. The warden has power to appoint and remove all necessary guards and assistants, in and about the prison, subject to the approval of the board as to the number appointed.

History: En. Sec. 2955, Pen. C. 1895;
re-en. Sec. 9721, Rev. C. 1907; re-en. Sec.
12439, R. C. M. 1921. Cal. Pen. C. Sec.
1578.

80-707. (12440) Same. The warden has the general superintendence of prison discipline and prison labor; must keep, or cause to be kept, a book wherein shall be recorded the name, age, sex, occupation, place of birth, where sent from, the crime charged, date of incarceration, and the expiration of the term for which the prisoners therein confined were sentenced, and shall make out a correct monthly report of the same, and file such report with the secretary of the board; and shall securely and carefully file in his office all commitments of prisoners that may be sent to the state prison, and keep, or cause to be kept, a correct account, and certify any mileage that may be due to any sheriff or deputy sheriff for conveying prisoners to the state prison.

History: En. Sec. 2956, Pen. C. 1895; 12440, R. C. M. 1921. Cal. Pen. C. Sec. re-en. Sec. 9722, Rev. C. 1907; re-en. Sec. 1578.

80-708. (12440.1) Musical instruments and library at state prison. Due to the generosity of W. A. Clark, Jr., in his lifetime, it appears that there has been accumulated at the state prison at Deer Lodge, a large and valuable assortment of musical instruments and a musical library devoted to the education and contentment of those who are unfortunate enough to be there held as prisoners.

History: En. Sec. 1, Ch. 180, L. 1935.

References

Conley et al. v. Johnson et al., 101 M 376, 390, 54 P 2d 585.

80-709. (12440.2) Trust fund for prison band. In addition to such collection, it further appears that the said W. A. Clark, Jr., created a trust fund of twenty-five thousand dollars (\$25,000.00) for the maintenance of a prison band, for musical instruction, and necessary musical equipment; which it is most desirable for the state to perpetuate for the purposes stated by its donor.

History: En. Sec. 2, Ch. 180, L. 1935.

80-710. (12440.3) Memorandum of trust. Such trust fund, it appears, is now being held and administered solely by Frank Conley, of Deer Lodge, his co-trustee, C. E. Larabie, having removed from the state and resigned, under a memorandum of trust which reads as follows:

"THIS MEMORANDUM WITNESSETH: That W. A. Clark, Jr., of Butte, Montana, has given in trust to the corporation, Larabie Brothers, a banking institution of Deer Lodge, Montana, the sum of twenty-five thousand dollars (\$25,000.00) to the end that such corporation shall pay semi-annual interest on said sum at the rate of four per cent. (4%) per annum, and shall pay said semi-annual interest January 1 and July 1 to Frank Conley and C. E. Larabie, of Deer Lodge, Montana, jointly also in trust, to the end that said Conley and said Larabie may apply such interest moneys as the same may be paid to the repairing of or to the replenishing of or to the supplying of musical instruments to the band of the state prison at Deer Lodge, Montana, as the said trustees, Conley and Larabie, may be advised, so long as said prison shall have and maintain a band therein and thereat. The interest-bearing period of the aforesaid sum of twenty-five thousand dollars (\$25,000.00) shall begin July 1, 1928.

"Upon the death or resignation of said Conley or said Larabie the said W. A. Clark, Jr., reserves the right to nominate any successor or successors to the trust.

"In the event such state prison shall dispense with its band for any reason, then and in that event the corpus of the trust and any interest accrued thereon shall instantly revert to the said W. A. Clark, Jr., or to his heirs.

"In acknowledgment of the receipt of the trust fund of twenty-five thousand dollars (\$25,000.00) and in acknowledgment of the trust itself, Larabie Brothers has hereunto set its hand and seal (in duplicate) at Deer Lodge, Montana, on this 1st day of July, A. D. 1928.

LARABIE BROTHERS BANKERS, INC.

Attest:

By C. E. LARABIE,
Its President.

A. G. LUEDMAN,
Its Secretary.

W. A. CLARK, JR."

"We, the undersigned, Frank Conley and C. E. Larabie, both of Deer Lodge, Montana, do hereby declare that we will act as trustees to effectuate the trust expressed in the above and foregoing memorandum and will so act without any compensation for our services to be rendered in such behalf.

"Witness our hand in duplicate, at Deer Lodge, Montana, this 1st day of July, A. D. 1928.

FRANK CONLEY,
C. E. LARABIE."

History: En. Sec. 3, Ch. 180, L. 1935.

80-711. (12440.4) Musical director at state prison—salary. Such donations and the benefit to the state accruing in the reformation and education of prisoners should at all times be maintained by the state, if possible, and therefore the governor is hereby empowered, with the approval of the state board of prison commissioners, to appoint a suitable person to act in the capacity of musical director at the prison, who shall receive a salary of two thousand five hundred dollars (\$2,500.00) per year, payable monthly from funds available from interest accruing from the said trust fund, or from appropriations available.

History: En. Sec. 4, Ch. 180, L. 1935.

80-712. (12440.5) Duties of musical director. The musical director herein provided for shall be the custodian of such musical instruments and equipment, and shall assist and train prisoners confined in the state prison in maintaining an orchestra and band by utilization of the equipment and trust fund so provided.

History: En. Sec. 5, Ch. 180, L. 1935.

80-713. (12440.6) Report of trustee—supervision of trust fund by court. For the purpose of administering said trust fund for the purposes expressed by the donor, and so that the trust may be continuing, the trustee shall be

required to make an annual report to the district court of the third judicial district of the state of Montana, in and for the county of Powell, of the use and administration of such trust fund, and shall make report at such times as may be directed by such court, and the court is hereby given supervision over the administration of said trust fund.

History: En. Sec. 6, Ch. 180, L. 1935.

80-714. (12441) Hours of labor for prison guards. A period of eight hours in each period of twenty-four consecutive hours shall constitute a day's work for all prison guards employed in and about the state prison; except in cases of insurrection, revolt, or escape of the prisoners confined therein, or of other emergencies endangering health, life, or property.

History: En. Sec. 1, Ch. 195, L. 1907; States~~C~~53.
Sec. 9723, Rev. C. 1907; re-en. Sec. 12441, 59 C.J. States §§ 114, 117, 188, 207.
R. C. M. 1921.

80-715. (12442) Penalty for violation of act. Every officer, warden, or contractor for the care and maintenance of the convicts of the state prison, who has charge of or employs the prison guards for such state prison, who violates any of the provisions of the preceding section shall be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five hundred dollars, or by imprisonment in the county jail for not less than thirty days nor more than six months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 195, L. 1907;
re-en. Sec. 9724, Rev. C. 1907; re-en. Sec.
12442, R. C. M. 1921.

80-716. (12443) Residence of warden, monthly estimate. The warden must reside at the state prison, and within five days before the expiration of each month must make out a complete statement of the probable or estimated amount of clothing, provisions, medicines, and all other stores and necessities, and the character and quality of the same, and make a requisition upon the board; and it must, as soon thereafter as possible, furnish, or cause to be furnished, the articles, stores, or provisions thus required, or so much thereof as it may deem necessary for the use of the prison during the ensuing month; but no supplies must be purchased or articles furnished the prison at a greater price than the usual market rates for such articles; and the board is not prevented from furnishing any necessary article at any time not enumerated in the monthly requisition of the warden, or from purchasing or contracting for a greater than a monthly supply of any article used in said prison, when deemed for the best interest of the state.

History: En. Sec. 2957, Pen. C. 1895;
re-en. Sec. 9725, Rev. C. 1907; re-en. Sec.
12443, R. C. M. 1921.

80-717. (12444) Accounts to be certified by warden. All accounts for provisions, clothing, medicines, fuel, lights, or other supplies or stores furnished to the state prison, as prescribed in the preceding section, must be presented to the warden, and if the articles therein enumerated have been received, he must so certify, and the accounts so certified must be delivered to the secretary of the board, and if the account be correct, and the articles

named therein were purchased or ordered by the board, it must audit and allow the claim. All claims for salaries, repairs, buildings, or labor must be certified to by the warden, presented, allowed, and paid as other indebtedness against the state prison.

History: En. Sec. 2958, Pen. C. 1895;
re-en. Sec. 9726, Rev. C. 1907; re-en. Sec.
12444, R. C. M. 1921.

80-718. (12445) Sealed proposals for supplies. The board may, whenever in its judgment it would be for the best interest of the state, advertise for sealed proposals for the furnishing of supplies to the state prison. Notice of the time and place of the letting of each contract must be given for at least two consecutive weeks in some newspaper published within this state. Such notice must state the character, quality, and quantity of the supplies required, and any person may bid for the furnishing of all or any part of the articles enumerated in the notice; but no contract must be made for furnishing more than one year's supplies, as estimated by the warden.

History: En. Sec. 2959, Pen. C. 1895; States 98.
re-en. Sec. 9727, Rev. C. 1907; re-en. Sec. 50 C.J. Prisons § 36.
12445, R. C. M. 1921.

80-719. (12446) Labor of convicts. The board may, in its discretion, cause the prisoners, or any number of them, to be employed in any mechanical pursuits, and at hard labor, and furnish any convicts thus employed with any materials that may be deemed necessary, in the same manner as is provided for the furnishing of supplies and stores to the state prison, and the board shall, in all respects, have the exclusive control of the employment of the convicts, and may from time to time employ them in such manner as, in its opinion, will best subserve the interest of the state and the welfare of the prisoners. But neither the board nor the warden must let by contract to any person the labor of any convict in the prison.

History: En. Sec. 2960, Pen. C. 1895; Convicts 7, 10(1).
re-en. Sec. 9728, Rev. C. 1907; re-en. Sec. 18 C.J.S. Convicts §§ 13, 16.
12446, R. C. M. 1921. 41 Am. Jur. 901, Prisons and Prisoners,
§§ 25 et seq.

Cross-Reference

Prison made goods, regulations for sale,
secs. 94-35-152 to 94-35-162.

80-720. (12447) Employment of convicts. If, at any time, the board is of the opinion that it would be to the interest of the state to employ any portion of the prisoners, either within or without the walls or enclosures of the state prison, either in improvement of the public grounds or buildings or otherwise where they may be profitably employed, it has power to so employ such labor; it must, in such case, direct the warden accordingly in writing, and cause a record of such order to be entered at length on the records of the board.

History: En. Sec. 2961, Pen. C. 1895; Convicts 7.
re-en. Sec. 9729, Rev. C. 1907; re-en. Sec. 18 C.J.S. Convicts § 13.
12447, R. C. M. 1921. 41 Am. Jur. 901, Prisons and Prisoners,
§§ 25 et seq.

80-721. (12447.1) Factory for manufacture of wearing apparel—authorization—purchase of material—disposal of product. The state board of prison commissioners of the state of Montana is hereby authorized and em-

powered, and it shall be its duty, to construct, maintain and operate at the Montana state prison, as soon as may be possible, a factory for the manufacture of wearing apparel. In connection with the operation of such factory the warden shall make requisition to the purchasing department of the state for the purchase of all necessary materials used in the manufacture of wearing apparel and products as contemplated by this act. All wearing apparel so manufactured at said penitentiary and not required for use therein, shall be sold to the state for use by the state in any of the public institutions owned or managed and controlled by the state, at and for such price as shall be fixed and determined by the state purchasing agent and warden of the state penitentiary, provided, however, that none of said wearing apparel shall be sold in the open market in competition with the products of free labor.

History: En. Sec. 1, Ch. 152, L. 1927.

Prisons↪12.

50 C.J. Prisons § 38 et seq.

80-722. (12447.2) Warden to be superintendent of factory—disposal of funds from sale of products—prison factory revolving fund created. The warden of the Montana state prison shall be the superintendent of such factory and shall conduct the same under the supervision of the said board of prison commissioners; he shall keep accounts of all transactions. All moneys received by said warden from the sale of such wearing apparel shall be deposited by him monthly with the state treasurer and be credited to the prison factory revolving fund, hereby created. Out of such fund there shall be paid such claims as are approved by the warden and the state board of examiners for expenses incident to the operation of such factory. As often as there shall accrue in said fund any profits amounting to the sum of one thousand dollars (\$1,000.00) from the operation of said factory, the same shall be paid into the general fund of the state.

History: En. Sec. 2, Ch. 152, L. 1927.

80-723. (12447.3) Convict labor to be used in factory. That for the purpose of operating said factory, there shall be used and employed the prisoners confined in said state penitentiary, and the warden is hereby authorized to employ such skilled laborers only as in his judgment and in the judgment of the board of prison commissioners, may be necessary for the feasible and profitable employment of the said prisoners, provided however, that no skilled laborers shall be employed if prison labor can be made use of.

History: En. Sec. 3, Ch. 152, L. 1927.

Convicts↪7.

18 C.J.S. Convicts § 13.

80-724. (12447.4) Warden to enter into agreements relative to state use of products of factory. The warden of the state penitentiary, with the consent of the state board of prison commissioners is hereby authorized and empowered to enter into any agreement relative to state uses of the products of such factory.

History: En. Sec. 4, Ch. 152, L. 1927.

Prisons↪12.

50 C.J. Prisons § 38 et seq.

80-725. (12447.5) Establishment of tannery at state penitentiary authorized. That the board of state prison commissioners is hereby authorized to establish at the Montana state prison at Deer Lodge, Montana, as part

of the said prison, a tannery. Said tannery shall be operated in conjunction with the other institutions of said prison by the employment of labor of prisoners confined therein.

History: En. Sec. 1, Ch. 173, L. 1929.

80-726. (12447.6) Funds for tannery, how provided—purchase of equipment and materials for tannery. That the said board is authorized to purchase such machinery, tools, materials and equipment as in its judgment are necessary and proper for the establishment and successful operation of said tannery, to be paid for out of the state prison fund, and any specific appropriations that may be made to said fund for this purpose; provided, the total cost of establishing said tannery shall not exceed the sum of eight thousand dollars (\$8,000.00). The warden, under the direction of the board is authorized to purchase hides and raw materials and all other things deemed necessary for the operation of said tannery, the cost of which, together with all costs and expenses of operating said tannery, shall likewise be paid from said state prison fund.

History: En. Sec. 2, Ch. 173, L. 1929.

80-727. (12447.7) What hides may be tanned—price on purchase and for tanning hides. In the operation of said tannery, there may be tanned and treated therein all hides belonging to the state of Montana; and any hides belonging to other persons and hides that may be purchased by the state. The said board is hereby authorized to determine the prices that will be paid from time to time for hides purchased by the state, and what charge shall be made to other persons for the tanning and treatment of hides belonging to them.

History: En. Sec. 3, Ch. 173, L. 1929.

80-728. (12447.8) Sale of hides. The said board is also authorized to sell any and all hides owned by the state that may be tanned or treated in said prison tannery, at such prices as it shall deem are fair market prices therefor, and all moneys received from the operation of said tannery shall be credited to the state prison fund.

History: En. Sec. 4, Ch. 173, L. 1929. 41 Am. Jur. 919, Prisons and Prisoners, § 46.

80-729. (12447.9) Warden to supervise tannery. The warden, under the direction of the board of prison commissioners, shall have charge and supervision of the operation of said tannery.

History: En. Sec. 5, Ch. 173, L. 1929.

80-730. (12447.10) Prison labor to make bricks—use of bricks. It is hereby made the duty of the board of prison commissioners to use the labor of the male prisoners in the Montana state prison for the manufacture of common brick and cement sand brick at Deer Lodge, Montana, said work to be in direct charge of the warden of the state prison and under the control and supervision of the state board of prison commissioners and said brick so made to be used only for the construction and/or repair of buildings at the Montana state prison.

History: En. Sec. 1, Ch. 196, L. 1931;
amd. Sec. 1, Ch. 94, L. 1935.

80-731. (12447.11) **Labor of inmates of state penitentiary and Montana state hospital may be used for construction and repair of buildings.** The board of prison commissioners may use the labor of the male prisoners in the Montana state prison for construction or repair of buildings at the Montana state prison at Deer Lodge; and the board of commissioners for the insane may use the labor of the male inmates in the Montana state hospital for the construction and repair of buildings at the Montana state hospital at Warm Springs, Montana.

History: En. Sec. 2, Ch. 196, L. 1931.

80-732. (12448) **Escape of convicts.** The warden and officers of the prison shall incur no forfeiture for the escape of any convict employed without the walls or inclosures of the prison by order of the board, or going to or returning from such employment, unless such escape should arise from neglect or violation of law, or the rules, regulations, or by-laws of the board.

History: En. Sec. 2962, Pen. C. 1895; re-en. Sec. 9730, Rev. C. 1907; re-en. Sec. 12448, R. C. M. 1921.

Cross-Reference

Rescues and escapes, secs. 94-4201 to 94-4209.

Prisons⊖16.

50 C.J. Prisons § 45 et seq.

See generally, 19 Am. Jur. 359, Escape, Prison Breaking, and Rescue.

Escape or prison breach as affected by means employed to effect it. 10 ALR 148.

Responsibility of persons participating in jail delivery for homicide committed by one of their number. 15 ALR 456.

What justifies escape or attempt to escape, or assistance in that regard. 56 ALR 666.

80-733. (12449) **Prison extended over places of labor.** The state prison is hereby declared to extend to and over any place or places of employment of the convicts without the walls or inclosures of the prison, at which convicts may be employed.

History: En. Sec. 2963, Pen. C. 1895; re-en. Sec. 9731, Rev. C. 1907; re-en. Sec. 12449, R. C. M. 1921.

80-734. (12450) **Moneys received for prison labor.** All sums that are now or may hereafter become due to the state for any manufactured article sold, or for labor performed, either within or without the prison walls or inclosures, must be certified to by the warden under oath to the board, who must receive and receipt for the same; and all moneys thus received must be paid into the state treasury, and the treasurer must place the same to the credit of the state prison fund; and the secretary of said board must make a report thereof to the state auditor, on or before the tenth day of each month.

History: En. Sec. 2964, Pen. C. 1895; re-en. Sec. 9732, Rev. C. 1907; re-en. Sec. 12450, R. C. M. 1921.

Prisons⊖12.

50 C.J. Prisons § 38 et seq.

80-735. (12451) **Inspection of books and papers.** All books or papers kept by or under the direction of the secretary of the board and the warden of the state prison, must, at all times on legal days, be open to the inspection of the members of the board, all state officers, members of the legislative

assembly, and the sheriffs of the several counties of this state; and shall, at the expiration of their term of office, be delivered over to their successors.

History: En. Sec. 2965, Pen. C. 1895;
re-en. Sec. 9733, Rev. C. 1907; re-en. Sec.
12451, R. C. M. 1921.

80-736. (12452) United States convicts, expenses of. The board and the warden of the state prison are hereby required to receive all criminals sentenced to the state prison by the authorities of the United States, and to keep them at hard labor or in solitary confinement, agreeable to the order of the court pronouncing such sentence, until legally discharged therefrom; and the warden must certify to the board the expense of keeping all convicts thus sentenced, and the said board must certify the same to the state auditor.

History: En. Sec. 2966, Pen. C. 1895; Prisons 2.
re-en. Sec. 9734, Rev. C. 1907; re-en. Sec. 50 C.J. Prisons § 8.
12452, R. C. M. 1921.

80-737. (12453) Rules and regulations of prison. The board must, from time to time, cause to be placed in some conspicuous place or places about the prison, so much of the laws of the state, and the rules, regulations, and by-laws of the state prison as relates to the intercourse between visitors to the prison and the prisoners therein confined.

History: En. Sec. 2967, Pen. C. 1895; References
re-en. Sec. 9735, Rev. C. 1907; re-en. Sec. State v. District Court et al., 85 M 215,
12453, R. C. M. 1921. 221, 278 P 122.

Cross-Reference

Unauthorized communication with prisoner, misdemeanor, sec. 94-35-241.

80-738. (12454) Penalty for violation of rules. Any person who violates any of the rules, regulations, or by-laws of the prison, as adopted and published by the board, must be subject to such penalties as may be prescribed by the board, and proceeded against in such manner as may be prescribed by law and the rules of the board. No barbarous punishments, by whipping, showering, or otherwise, must be prescribed by the board; nor shall convicts, as punishment, be deprived of the regular rations of food, and at the same time compelled to work the usual number of hours per day.

History: En. Sec. 2968, Pen. C. 1895; Prisons 13.
re-en. Sec. 9736, Rev. C. 1907; re-en. Sec. 50 C.J. Prisons § 38 et seq.
12454, R. C. M. 1921.

80-739. (12455) Commutation of sentence upon good behavior. The board is hereby authorized and required to grant to any convict confined in the state prison, who shall well behave himself and who shall perform regular labor during good health, either within or without the state prison inclosures, a credit of the time from his sentence as appears in the following table, for respective years of his sentence, and pro rata for any part of a year when the sentence is for more or less than a year:

NUMBER OF YEARS OF SENTENCE.	GOOD TIME GRANTED.	TOTAL GOOD TIME MADE.	TIME TO BE SERVED IF FULL TIME IS MADE.
1st year.....	1 month.....	1 month.....	11 months
2d year.....	2 months.....	3 months.....	1 year and 9 months
3d year.....	3 months.....	6 months.....	2 years and 6 months
4th year.....	4 months.....	10 months.....	3 years and 2 months
5th year.....	5 months.....	1 year and 3 months.....	3 years and 9 months
6th year.....	6 months.....	1 year and 9 months.....	4 years and 3 months
7th year.....	6 months.....	2 years and 3 months.....	4 years and 9 months
8th year.....	6 months.....	2 years and 9 months.....	5 years and 3 months
9th year.....	6 months.....	3 years and 3 months.....	5 years and 9 months
10th year.....	6 months.....	3 years and 9 months.....	6 years and 3 months
11th year.....	6 months.....	4 years and 3 months.....	6 years and 9 months
12th year.....	6 months.....	4 years and 9 months.....	7 years and 3 months
13th year.....	6 months.....	5 years and 3 months.....	7 years and 9 months
14th year.....	6 months.....	5 years and 9 months.....	8 years and 3 months
15th year.....	6 months.....	6 years and 3 months.....	8 years and 9 months
16th year.....	6 months.....	6 years and 9 months.....	9 years and 3 months
17th year.....	6 months.....	7 years and 3 months.....	9 years and 9 months
18th year.....	6 months.....	7 years and 9 months.....	10 years and 3 months
19th year.....	6 months.....	8 years and 3 months.....	10 years and 9 months
20th year.....	6 months.....	8 years and 9 months.....	11 years and 3 months
21st year.....	6 months.....	9 years and 3 months.....	11 years and 9 months
22d year.....	6 months.....	9 years and 9 months.....	12 years and 3 months
23d year.....	6 months.....	10 years and 3 months.....	12 years and 9 months
24th year.....	6 months.....	10 years and 9 months.....	13 years and 3 months
25th year.....	6 months.....	11 years and 3 months.....	13 years and 9 months

History: En. Sec. 1, p. 398, L. 1877; re-en. Sec. 237, 5th Div. Rev. Stat. 1879; re-en. Sec. 308, 5th Div. Comp. Stat. 1887; amd. Sec. 2969, Pen. C. 1895; re-en. Sec. 9737, Rev. C. 1907; re-en. Sec. 12455, R. C. M. 1921. Cal. Pen. C. Sec. 1588.

Cross-Reference

Pardon or parole, secs. 94-9801 to 94-9820.

Operation and Effect

To justify an ex convict in bringing an action for false imprisonment against the warden of the state prison because of the failure of defendant to deduct from the sentence imposed upon him by the judgment of imprisonment the good-time allowance provided for by this section, he must

be able to show that the board of prison commissioners had granted him such commutation but that defendant had refused to deduct the credits allowed; otherwise the complaint fails to state a cause of action. *Stephens v. Conley*, 48 M 352, 366, 138 P 189.

References

Anderson et al. v. Wirkman, 67 M 176, 187, 215 P 224; *State ex rel. Bottomly v. District Court*, 73 M 541, 548 et seq., 237 P 525; *State v. Hukoveh*, 115 M 125, 134, 139 P 2d 538.

Prisons—15.

50 C.J. Prisons § 45 et seq.

41 Am. Jur. 914, Prisons and Prisoners, §§ 41 et seq.

80-740. (12456) Good behavior allowance for convicts in certain employments. The state board of prison commissioners is hereby authorized and required to adopt rules and regulations applicable to all convicts employed upon any prison work or activity whereby said convicts so employed, but only while so employed, may be granted additional good time allowance in addition to that now provided by the preceding section for good conduct, conditioned upon such convicts' good behavior and compliance with all rules and regulations which may be made by said board or superintendent or warden of the state prison, for the management and control of said prison and such convicts; provided, said rules may grant not to exceed an additional good time allowance of ten (10) days per month, and further, provided, that an attempted escape by the convict, or such violation of the

rules and regulations so prescribed, as in the judgment of the said board should be punished by forfeiture of such extra good time, shall operate as forfeiture of all extra good time as may have been allowed by said board of prison commissioners, now authorized in this act.

History: En. Sec. 1, Ch. 60, L. 1917;
re-en. Sec. 12456, R. C. M. 1921; amd. Sec.
1, Ch. 107, L. 1943.

References

State ex rel. Bottomly v. District Court,
73 M 541, 550, 237 P 525.

80-741. (12457) Forfeiture of commutation. Any such convict who commits an assault upon his keeper, any guard, officer, or convict, or otherwise endangers life, or by any flagrant disregard of the rules of the prison, or any misdemeanor whatever forfeits all deductions of time earned by him for good conduct before the commission of such offense; such forfeiture, however, must only be made by the board, after due proof to the offense, and notice to the offender; nor shall such forfeiture be imposed when a party has violated any rule or rules without violence or evil intent, of which the board must be the sole judges. The name of no convict who attempts to escape must be sent to the board for the commutation herein provided.

History: En. Sec. 2970, Pen. C. 1895;
re-en. Sec. 9738, Rev. C. 1907; re-en. Sec.
12457, R. C. M. 1921.

Operation and Effect

In order to carry out the provisions of sections 80-701, 80-739, and of this section,

which seem to indicate a course of procedure for the board of prison commissioners, the board must investigate the record of every convict, probably at the end of every year of his service, and grant the proper credits, if earned. Stephens v. Conley, 48 M 352, 366, 138 P 189.

80-742. (12458) Discharged convict entitled to clothes and money. Whenever any convict is discharged from the state prison and is delivered to the custody of any state or federal law enforcement officer or agent for transfer to any other state prison, federal prison or other penal institution, the warden must pay him five (\$5.00) dollars in money and must also furnish him with only such clothing as is reasonably necessary and suitable for his use during said transfer, at a cost not exceeding twenty-five (\$25.00) dollars. Whenever any other convict is discharged from the state prison, the warden must provide him with proper and suitable clothes at a cost not exceeding twenty-five (\$25.00) dollars and must pay him twenty-five (\$25.00) dollars in money; provided, however, that there shall be deducted from said twenty-five (\$25.00) dollars payment whatever amount such convict then has to his credit in cash or bonds on the books and records of the prison.

History: En. Sec. 2971, Pen. C. 1895;
re-en. Sec. 9739, Rev. C. 1907; re-en. Sec.
12458, R. C. M. 1921; amd. Sec. 1, Ch. 110,
L. 1943; amd. Sec. 1, Ch. 72, L. 1945.

Prisons ⇨ 14.

50 C.J. Prisons § 44 et seq.

80-743. (12459) County jails may be made prisons. Whenever the state prison is insufficient to contain the prisoners sentenced to confinement therein, the board must enter into contracts with the commissioners of such counties as have jails suitable for keeping convicts, that may thereafter be sentenced to confinement in the state prison, and must notify the district judges that such jails have been procured for state prison purposes, and such judges, until further notified, must sentence any prisoner convicted of a felony to one of the jails so designated.

History: En. Sec. 2972, Pen. C. 1895; Prisons 1.
 re-en. Sec. 9740, Rev. C. 1907; re-en. Sec. 50 C.J. Prisons § 9.
 12459, R. C. M. 1921.

80-744. (12460) Bond of warden. The warden, before entering upon the discharge of his duties, shall execute a bond in such sum as the board designates, not exceeding twenty thousand dollars, for the faithful discharge of his duties, which bond shall be given to the state, approved by the state treasurer, and filed with the secretary of state.

History: En. Sec. 2973, Pen. C. 1895;
 re-en. Sec. 9741, Rev. C. 1907; re-en. Sec.
 12460, R. C. M. 1921.

80-745. (12461) Insane convicts. When the warden is of opinion that any prisoner is insane, he must certify the fact under oath to the board, which may, in its discretion, order the removal of such prisoner to the insane asylum. As soon as the authorities of the asylum ascertain that such person is not insane, they must immediately notify the board of that fact, and thereupon the warden must cause such prisoner to be at once returned to the prison, if his term of imprisonment has not expired.

History: En. Sec. 2974, Pen. C. 1895; Insane Persons 86.
 re-en. Sec. 9742, Rev. C. 1907; re-en. Sec. 44 C.J.S. Insane Persons §§ 128, 129, 131,
 12461, R. C. M. 1921. 132.

80-746. (12462) Reports of warden and board. The warden must, on or before the first Monday of November of each year, make a detailed report to the board for the year ending on the last day of the preceding month, stating therein the names of the guards and assistants, and other officers, with their salaries, the number of convicts, showing the name of each convict, his age and general appearance, when and where convicted, and of what crime, term of sentence and when it expires, and the number received and discharged during the year, the amount of manufacture, and the money received from the same and the cost thereof, and a full statement of the condition, management, and concerns of the prison, and the board must make a like report to each legislative assembly.

History: En. Sec. 2975, Pen. C. 1895; Prisons 9.
 re-en. Sec. 9743, Rev. C. 1907; re-en. Sec. 50 C.J. Prisons § 27.
 12462, R. C. M. 1921.

80-747. (12463) State prison fund. The moneys appropriated by the legislative assembly and the proceeds of the labor of prisoners constitute the state prison fund. The moneys in the state prison fund are applicable to the payment of the expenses of the prison, and salaries. The expenses and salaries must be audited and allowed by the board of examiners; after which, upon the order of the board, the state auditor must draw his warrant on the treasurer therefor, and the treasurer must pay the same out of such fund. The board cannot contract any debts or incur any liability binding upon the state.

History: En. Sec. 2976, Pen. C. 1895; Prisons 12.
 re-en. Sec. 9744, Rev. C. 1907; re-en. Sec. 50 C.J. Prisons § 38 et seq.
 12463, R. C. M. 1921.

80-748. (12464) Compensation of sheriffs. Sheriffs delivering prisoners at the state prison must receive all actual expenses necessarily incurred in their transportation, the amount of the expenses in each case to be audited

and allowed by the board of examiners, and paid out of any moneys in the state treasury appropriated for that purpose, and no further or other compensation must be received by sheriffs for such transportation or services.

History: En. Sec. 2977, Pen. C. 1895; Sheriffs and Constables 40.
re-en. Sec. 9745, Rev. C. 1907; re-en. Sec. 57 C.J. Sheriffs and Constables § 1157.
12464, R. C. M. 1921.

80-749. (12465) Duties of board—clerk. The board has the power to employ a clerk. It is the duty of the board, or the secretary thereof, to cause to be kept in a book or books to be kept for that purpose a full and complete account of all the transactions and proceedings of the board. The board shall also cause to be kept at the state prison a book wherein shall be recorded the name, nativity, age, height, weight, occupation, county convicted in, crime charged, term, date of sentence, date of incarceration, expiration of sentence without good time, expiration of sentence with full good time, of all prisoners therein confined, and shall cause to be kept in the office of the board such records as will enable the board or any member thereof to ascertain the name of every prisoner confined in the state prison, and such other facts as in the judgment of the board may be necessary in order to have before them a full and complete record of every prisoner confined, together with the cost of maintaining the same per month and the expenses incurred in the erection and improvements of buildings upon the prison grounds.

History: En. Sec. 2980, Pen. C. 1895;
re-en. Sec. 9748, Rev. C. 1907; re-en. Sec.
12465, R. C. M. 1921.

CHAPTER 8

MONTANA STATE INDUSTRIAL SCHOOL

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| | 80-825. Additional buildings. |
| | 80-826. State reform school building fund. |
| | 80-827. Expenses of improvements—state board of examiners. |

80-801. (12488) Reform school located and established. A reform school is hereby established to be located at or within three miles of the city of Miles City, in the county of Custer, to be known as the Montana state reform school.

History: En. Sec. 1, p. 183, L. 1893;
re-en. Sec. 3062, Pen. C. 1895; re-en. Sec.
9779, Rev. C. 1907; re-en. Sec. 12488, R. C.
M. 1921.

Reformatories↪2.
53 C.J. Reformatories § 2 et seq.
See generally, 26 Am. Jur. 607, Houses
of Correction, Reformation and Refuge.

80-802. (12489) Designation of the Montana state industrial school. From and after the passage and approval of this act, the name of the Montana state reform school shall be the Montana state industrial school.

History: En. Sec. 1, Ch. 136, L. 1915;
re-en. Sec. 12489, R. C. M. 1921.

Reformatories↪2.
53 C.J. Reformatories § 2 et seq.

80-803. (12491) Powers of directors and officers. The director and all other officers and employees of the Montana state reform school shall be and they are hereby vested with all the powers, duties, and obligations as such director, officers, and employees of the Montana state industrial school as they now have as director, officers, and employees of the Montana state reform school. And all existing statutes or other provisions of law relating to the Montana state reform school are hereby made applicable to the Montana state industrial school.

History: En. Sec. 3, Ch. 136, L. 1915;
re-en. Sec. 12491, R. C. M. 1921.

Reformatories↪3.
53 C.J. Reformatories § 7 et seq.

80-804. (12492) State industrial school fund. The fund created by the provisions of section 80-826 shall hereafter be known as "the state industrial school fund."

History: En. Sec. 4, Ch. 136, L. 1915;
re-en. Sec. 12492, R. C. M. 1921.

80-805. (12493) Supervision and control. The general supervision and control of the Montana state industrial school is vested in the state board of education and a local executive board appointed in the manner and having the powers and duties as provided in sections 75-302 to 75-309, and in addition thereto such powers and duties prescribed and set forth in this chapter, for the board of trustees, and wherever the terms "board" or "board of trustees" may be used therein they shall be deemed and construed to mean the executive board.

History: En. by recommendation of
code commissioner, 1921, as Sec. 12493,
R. C. M. 1921; amd. Sec. 1, Ch. 156, L.
1943.

Biennial statement of moneys received
and expended, sec. 79-1405.

Donations to school, sec. 75-311.

Executive board, sec. 75-302 et seq.

Cross-References

Accounting, sec. 82-102.

Interest and income fund of school, sec.
79-1401.

80-806. (12494) Objects and purposes—commitment to school. Said school shall be for the keeping and reformatory training of all male youths between the ages of ten (10) and twenty-one (21) years who are residents of the state of Montana and who have been regularly committed to said school by a duly authorized court. Such youths shall be presented to the presiding officer of said school by an accompanying officer, employee of said school, parent or guardian, who shall likewise exhibit a certificate of commitment from the court ordering same.

History: En. Sec. 3063, Pen. C. 1895; re-en. Sec. 9780, Rev. C. 1907; amd. Sec. 1, Ch. 42, L. 1921; re-en. Sec. 12494, R. C. M. 1921; amd. Sec. 2, Ch. 156, L. 1943; amd. Sec. 1, Ch. 42, L. 1945.

Cross-Reference

Juvenile disorderly persons committed to, sec. 75-3002.

See generally, 26 Am. Jur. 607, Houses of Correction, Reformation and Refuge.

What constitutes delinquency or incorrigibility, justifying commitment of infant. 45 ALR 1533.

Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child. 60 ALR 1342.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile courts. 123 ALR 446.

80-807. Delivery officers to convey boys to state industrial school. The state industrial school shall designate one or more suitable employees to be known as delivery officers, to convey to such school from the place of commitment, boys legally committed thereto, and such officers so designated shall have the power and authority of deputy sheriffs in respect thereto. The actual expense of conveying boys to the school by such delivery officers shall be at expense of the county from which said boy is committed. Such delivery officers shall be deemed officers of the court issuing the commitment for the purposes herein set forth.

History: En. Sec. 1, Ch. 97, L. 1941.

80-808. (12495) Employment of president and matron. The state board of education shall employ a president and matron of the Montana state industrial school. It shall be the duty of said president to take charge of the school, and he shall also have immediate control of the male department of said school, and the matron shall have immediate control of the female department of the school; and the local executive board shall also appoint such other officers and teachers as may be necessary for the management of the school.

History: En. March 1, 1893; re-en. Sec. C. 1907; amd. Sec. 1, Ch. 61, L. 1921; re-en. 3074, Pen. C. 1895; re-en. Sec. 9791, Rev. Sec. 12495, R. C. M. 1921.

80-809. (12496) Duties of president. The president shall be present at all meetings of the local executive board after his appointment and qualification and shall there confer with the state board of education regarding the management and interests of the school, and shall have entire supervision of the school, subject, however, to the control of said board, and shall hold his office during the pleasure of the said state board of education.

History: En. Sec. 15, p. 186, L. 1893; 9794, Rev. C. 1907; amd. Sec. 1, Ch. 43, re-en. Sec. 3077, Pen. C. 1895; re-en. Sec. L. 1921; re-en. Sec. 12496, R. C. M. 1921.

80-810. (12497) Duties of trustees. It shall be the duty of the board of trustees to investigate any and all complaints made against the director, matron, or other employee of said reform school, and for good and sufficient reason to remove the person against whom such complaint shall have been made. The board shall further investigate any and all charges made by the president against any inmate or inmates of the school, and if, after the investigation of such charges, any inmate or inmates of such school shall be found incorrigible, unmanageable, or detrimental to the best interest of the school, such inmate or inmates, as the case may be, may be returned to the court which made the commitment. The board, upon ordering the return of any inmate or inmates to the court which made the

commitment or commitments, shall immediately forward to the judge of the district court a certificate setting forth the proceedings of the board in investigating such charges, and setting forth fully their reasons for so returning such inmate or inmates to the said judge or court. The court or judge to whom such inmate or inmates of such school may be returned may thereupon take such proceedings as the judge thereof may deem advisable, and may impose such penalty as provided by law for the offense for which such boy or girl had been committed to the reform school; provided, that the time such boy or girl has been in the reform school under such commitment shall not be considered in imposing such penalty; and provided further, that such boy or girl shall not be by the court or judge thereof returned to the reform school.

Any complaint made against the president or other employee of said school, or made by the president against any inmate of said school, shall be in writing, duly verified, setting forth specifically the acts complained of, and addressed to the board of trustees of the state reform school. Upon receiving such complaint, the board shall thereupon fix a time and place for the investigation of the charges set forth therein. Upon such hearing, the board shall proceed to take the testimony of the complainant and of such other witnesses as he or she may produce, and may subpoena witnesses, so as to make a full and thorough examination as to the merits of such complaint. The member of the board of trustees acting as presiding officer at such investigation shall have power and is hereby authorized to administer oaths to any and all persons produced as witnesses upon such hearing.

A record shall be kept of all such investigations, and the testimony reduced to writing and filed with the secretary upon such hearing.

History: Ap. p. Sec. 16, p. 186, L. 1893; NOTE.—See section 80-805.
 en. Sec. 3078, Pen. C. 1895; re-en. Sec. 9795,
 Rev. C. 1907; re-en. Sec. 12497, R. C. M.
 1921.

80-811. (12499) Branches to be taught. All the branches taught in the public schools of the state shall be taught in the industrial school, and the inmates shall be taught and trained in morality, temperance and frugality, and they shall also be instructed in the different trades, vocations and callings, as far as possible within the scope of the institution.

History: En. Sec. 18, p. 187, L. 1893; **Cross-Reference**
 re-en. Sec. 3080, Pen. C. 1895; re-en. Sec. Education of inmates at University of
 9797, Rev. C. 1907; re-en. Sec. 12499, R. C. Montana, sees. 10-110 to 10-114.
 M. 1921; amd. Sec. 3, Ch. 156, L. 1943.

Reformatories 7.

53 C.J. Reformatories § 9 et seq.

80-812. (12500) Rules. The board of trustees shall have power and authority under the direction and subject to the approval of the state board of prison commissioners to regulate the workings of the school, and from time to time, as may be necessary, to erect additional buildings, make all needful improvements, purchase machinery, and tools, and implements to be used in any of the trades taught in said school, and have general supervision and control of the institution, and may make such rules for its management and control as may be necessary; provided, that no rule made by said board shall be in conflict with the provisions of the constitu-

tion or laws of the state; and provided further, that such buildings and improvements shall not exceed in cost the sums appropriated for such purposes.

History: En. Sec. 19, p. 187, L. 1893; NOTE.—See section 80-805.
re-en. Sec. 3081, Pen. C. 1895; re-en. Sec.
9798, Rev. C. 1907; re-en. Sec. 12500, R. C.
M. 1921.

80-813. (12501) Report of president. The president shall at the close of each year make a full and complete report to the board of the advancement, number and standing of the inmates of the school, as well as the number received and the number discharged during the year, and he shall give such further information as the board may require.

History: En. Sec. 20, p. 187, L. 1893; 9799, Rev. C. 1907; re-en. Sec. 12501, R. C.
re-en. Sec. 3082, Pen. C. 1895; re-en. Sec. M. 1921.

80-814. (12502) Report of board. The board shall make a biennial report to the governor. Said report to contain a complete list of the officers and employees connected with the school, the number of inmates (male and female), the number admitted and the number dismissed during the period covered by the reports, an account of all expenditures incurred, and for what purpose, and as nearly as possible the advancement made by the inmates. They shall also show the needs of the school as far as buildings and improvements are concerned, and may recommend the passage of any laws they may deem necessary for the benefit of the school.

History: En. Sec. 21, p. 187, L. 1893; 9800, Rev. C. 1907; re-en. Sec. 12502, R. C.
re-en. Sec. 3083, Pen. C. 1895; re-en. Sec. M. 1921.

80-815. (12503) Who may be committed—form of commitment. No boy or girl shall be committed to said school who is not of sound intellect, free from cutaneous or other contagious disease, or who is subject to epileptic or other fits, and he or she must be possessed of that degree of bodily health which would render him or her a fit subject for the discipline of such school.

And it shall be the duty of the court or judge committing any such boy or girl, to cause him or her to be examined by a reputable licensed physician, who shall certify to the above facts, which certificate shall be forwarded to said reform school with the commitment.

The commitment may be in the following form:

ORDER OF COMMITMENT

State of Montana, County of _____, ss.

In the district court, in and for the _____ judicial district, in and for said county and state.

Be it remembered, that on the _____ day of _____, 19____, a minor of said county was charged, on complaint of _____, brought before me, the undersigned judge of said court, and upon due proof I do find that the said _____ is a suitable person to be committed to the instruction and discipline of the state industrial school.

Now, therefore, it is hereby ordered that the said _____ be and is hereby committed to said Montana state industrial school until

..... attains the age of twenty-one years or until
 is legally discharged by the proper authorities of said school.

And I find, upon the hearing of said matter, that the said
 was charged with, that is a ✓
 resident of said county, and of the age of years.

That father's name is; he resides at
, in the state of, by occupation a
 That mother's name is
 a resident of the state of, by occupation a The
 names of other near relatives and their residences are as follows:

Witness my hand this day of, A. D. 19.....
, Judge.

State of Montana, County of, ss.

I,, clerk of the district court of said county, do hereby
 certify that the Honorable, whose signature is appended to
 the foregoing order of commitment, was at the date thereof and now is the
 judge of the district court in and for said county.

In witness whereof I have hereunto set my hand and affixed the seal
 of said court this day of, A. D. 19.....

(Seal), Clerk.

The certificate of health may be in the following form:

State of Montana, County of, ss.

....., being first duly sworn, deposes and says: That he is a
 practicing physician, duly licensed to practice medicine and surgery in the
 state of Montana; that at the request of the Honorable,
 judge of the district court in and for said county, he made a careful ex-
 amination of, and as a result of said examination, he makes
 answer to the following questions correctly, to the best of his knowledge,
 judgment, and belief:

Has..... a perfect vision?

Ans.....

Is..... of sound intellect?

Ans.....

Has..... sufficient bodily strength to receive instruction?

Ans.....

Has..... any tendency to scrofula or consumption?

Ans.....

Is..... perfectly free from any cutaneous disorder?

Ans.....

Is..... subject to epileptic or other fits?

Ans.....

Has..... had the smallpox?

Ans.....

Has..... been vaccinated?

Ans.....

Is of sufficiently sound mind and bodily health to be a proper person to commit to the state industrial school?

Ans.

....., Physician.

Subscribed and sworn to before me this day of, 19.....

....., Clerk.

State of Montana, County of, ss.

I,, clerk of the district court of said county, do hereby certify that, whose signature is appended to the foregoing certificate, is a reputable and respectable physician and surgeon in said county.

In witness whereof, I have hereunto set my hand and affixed the seal of said court, this day of, 19.....

(Seal)

....., Clerk.

History: En. March 14, 1895; Sec. 3088, Pen. C. 1895; re-en. Sec. 9805, Rev. C. 1907; amd. Sec. 1, Ch. 62, L. 1921; re-en. Sec. 12503, R. C. M. 1921.

NOTE.—See in connection with this section, section 82-402.

Infants 69.

43 C.J.S. Infants § 94 et seq.

80-816. (12504) Expenses. It shall be stated in the order of commitment the place where the boy resided at the time he was taken into custody, his age, as near as can be ascertained, and that such boy has not been convicted of any crime and is not deprived of any of his civil rights or privileges by reason of the making of such order of commitment; and shall command such officer, or an employee of the industrial school designated for such purpose as provided in section 80-807, to take such boy and deliver him without delay to the president of said school, or other person in charge thereof, at the place where the same is located, and the showing of such certificate of the purposes of this act shall be conclusive evidence of his residence or age; accompanying this warrant the judge shall transmit by the officer or employee of the school executing it, a statement of the nature of the complaint to the president, together with such other particulars concerning the boy as the judge is able to ascertain; provided that the expense of committing the boy to said school and the returning of him to his parent or guardian after his release therefrom, shall be at the expense of the county of which such boy is committed; and provided that the county from which any boy committed to such school shall be sent be liable for the expense attending the care, education, training, and safekeeping of such boy, and shall pay for the same the sum of fifty (50c) cents per day for each boy so sent, while he will be in actual physical attendance in said institution. On the first of every month the president of such school shall prepare and transmit to the respective boards of county commissioners of the several counties liable for such care, education and safekeeping, an itemized account showing the name of each boy, the number of days in the immediately preceding month for which such payment is to be made and the amount thereof, and said board of county commissioners, after checking the same for its correctness, shall allow it and pay the same by warrant drawn against its general or poor fund, payable to said industrial school and all

such warrants when received shall be by the president of school transmitted to the state treasurer and the proceeds thereof shall be deposited to the credit of the state general fund; and provided further, that the provisions of this section requiring payment to be made by counties for care, education, training, and safekeeping shall apply to all boys committed to and in such school on the date this act takes effect.

History: En. Sec. 3089, Pen. C. 1895; L. 1943; amd. Sec. 1, Ch. 11, L. 1945; amd. re-en. Sec. 9806, Rev. C. 1907; re-en. Sec. Sec. 1, Ch. 203, L. 1947.
12504, R. C. M. 1921; amd. Sec. 4, Ch. 156,

80-817. (12505) Appeals. The judge of any district court of any county in the state may, either in chambers or in term time, proceed under the provisions of this act; provided, that any proceedings had before the judge in chambers in any county at a time when the district court of said county is not in session, shall be entered and recorded in the minutes of said court on the first day of the next ensuing term. Any and all proceedings before the district court, or judge thereof, may be reviewed on writ of error by the supreme court, and in the manner provided by law for reviewing criminal cases in said supreme court.

History: En. Sec. 3090, Pen. C. 1895; re-en. Sec. 9807, Rev. C. 1907; re-en. Sec. 12505, R. C. M. 1921.

80-818. (12506) Duration of custody. Each boy committed to the state industrial school shall remain there until he arrives at the age of twenty-one (21) years, unless paroled or legally discharged; provided that it shall be lawful for the executive board upon the recommendation of the president of said school to discharge therefrom any boy who has arrived at the age of eighteen (18) years, if it be made to appear while there as an inmate he deported and conducted himself in such a manner as to make it reasonably probable that he has reformed and is a proper person to be discharged.

History: En. Sec. 3091, Pen. C. 1895; re-en. Sec. 9808, Rev. C. 1907; re-en. Sec. 12506, R. C. M. 1921; amd. Sec. 5, Ch. 156, L. 1943. Reformatories 10.
53 C.J. Reformatories § 17 et seq.

80-819. (12507) Commutation of sentence. Whenever any boy or girl under the age of eighteen years has been sentenced by any court of competent jurisdiction to imprisonment in the state's prison, it shall be lawful for the governor, by and with the approval of the board of pardons, upon the application of such boy, his parent or guardian, to commute the punishment by substituting therefor the commitment of such boy to the Montana state reform school, during the minority of such boy, unless sooner discharged by the board of trustees, under the regulations as herein provided. But should such boy, after being sent to such reform school, persist in a depraved course, or escape therefrom, it shall be in the power of the governor, by and with the approval of the board of pardons, to revoke such commutation, and remand him to the state's prison to serve out his unexpired term, and the time so spent by him at the reform school, or while a refugee therefrom, shall not be considered as a part of his original term of commitment.

History: En. Sec. 3092, Pen. C. 1895; re-en. Sec. 9809, Rev. C. 1907; re-en. Sec. 12507, R. C. M. 1921. Prisons 13; Reformatories 9.
50 C.J. Prisons § 38 et seq.; 53 C.J. Reformatories § 16.

80-820. (12508) Releases on parole. The executive board, on recommendation of the president of the school may release a boy on trial or parole, but in all cases where a boy is released on trial or parole, he must, at stated intervals, report his conduct to the president and present certificates of good behavior, whereupon his leave or parole may be extended, or the executive board, by a unanimous vote, may grant him a full and unconditional discharge and order him finally released from the custody and control of such school. It shall be the duty of the president to recall and return to the school any boy who may not be conducting himself properly, or who may not have a suitable home, and for such purpose such industrial school shall have sole custody and control over any boy so paroled until he shall have reached the age of twenty-one (21) years, or until he shall be finally discharged.

History: En. Sec. 3093, Pen. C. 1895; Reformatories↪8.
re-en. Sec. 9810, Rev. C. 1907; amd. Sec. 53 C.J. Reformatories § 17 et seq.
1, Ch. 57, L. 1917; re-en. Sec. 12508, R. C.
M. 1921; amd. Sec. 6, Ch. 156, L. 1943;
amd. Sec. 1, Ch. 96, L. 1945.

80-821. (12509) Fugitives from school. Any fugitive from said institution may be arrested and returned to said institution by any officer or citizen.

History: En. Sec. 3094, Pen. C. 1895; Reformatories↪7.
re-en. Sec. 9811, Rev. C. 1907; re-en. Sec. 53 C.J. Reformatories § 9 et seq.
12509, R. C. M. 1921.

80-822. (12510) Escapes—connivance at—penalty. If any officer or employee of the Montana state industrial school, or any other person, shall contrive, procure, and connive at, or otherwise voluntarily suffer the escape of any inmate of said school, whether actually confined or released on trial or parole, or who after full knowledge that an inmate thereof has escaped therefrom, or being on trial or parole has broken the same, conceal it from the officers of said institution or from any sheriff, constable, marshal, or policeman in this state seeking the whereabouts of said escaped inmate or parole violator, or who harbors, conceals, or protects any such escaped person or parole violator, every such person on conviction shall be punished by imprisonment in the state's prison for a period of not less than six months, nor more than two years, and be fined in the sum of not exceeding one thousand dollars.

History: En. Sec. 3095, Pen. C. 1895; Escape↪5.
re-en. Sec. 9812, Rev. C. 1907; re-en. Sec. 30 C.J.S. Escape §§ 19-24.
12510, R. C. M. 1921.

80-823. (12511) Same. If any person shall carry to any inmate of said school or into said school any tool, weapon, or other aid with intent to enable any inmate thereof to escape from custody or confinement, whether such escape be effected or not, any person so offending, on conviction thereof, shall be punished by a fine not more than five hundred dollars, or imprisonment in the state's prison for a period of not more than two years, or both such fine and imprisonment.

History: En. Sec. 3096, Pen. C. 1895;
re-en. Sec. 9813, Rev. C. 1907; re-en. Sec.
12511, R. C. M. 1921.

80-824. (12512) Reward for arrest of fugitive. If any person who has been committed to the state reform school shall escape therefrom, the governor or acting governor is authorized to offer a reward for his or her apprehension, which reward shall not exceed the sum of one hundred dollars, and shall be paid out of the state treasury, and the amount which any governor or acting governor of this state may offer as the reward for the apprehension of any inmate, as aforesaid, is hereby appropriated, and it is hereby made the duty of the state auditor to issue to the person or persons whom he may determine are entitled to such a reward a warrant on the state treasury therefor.

History: En. Sec. 3097, Pen. C. 1895; Rewards $\text{C}\rightarrow 4$.
re-en. Sec. 9814, Rev. C. 1907; re-en. Sec. 54 C.J. Rewards § 7 et seq.
12512, R. C. M. 1921.

80-825. (12513) Additional buildings. Whenever, in the judgment of the board of trustees of the state reform school, they may deem it necessary to erect additional buildings or make needed improvements and repairs upon buildings already erected, such board, under the direction and subject to the approval of the board of state prison commissioners, may cause such buildings to be erected and improvements made in accordance with the general provisions of an act entitled, "An act to provide for the establishment and location of a state reform school and to appropriate money therefor," approved March 1, 1893, and the expenses therefor shall be audited and allowed in the mode and manner provided by law, and paid out of the state reform school building fund; provided, however, that the cost of such buildings and improvements shall not exceed thirty thousand dollars for the years 1895 and 1896; provided, further, that thereafter the expenses for erecting additional buildings and making the needed improvements thereon shall not exceed the amount of money to the credit of such fund for any one given year.

History: En. Sec. 3098, Pen. C. 1895; **Cross-Reference**
re-en. Sec. 9815, Rev. C. 1907; re-en. Sec. Residence halls, erection and mainten-
12513, R. C. M. 1921. ance, sec. 75-201.

80-826. (12514) State reform school building fund. In order to carry into effect the provisions of an act entitled, "An act to provide for the establishment and location of a state reform school and to appropriate moneys therefor," approved March 1, 1893, and as well all acts amendatory thereof and supplemental thereto, there is hereby created a fund which shall be known as "the state reform school building fund," into which shall be covered the proceeds of all moneys derived from the sale of timber and from the sale or lease of such lands as have been or may be granted to the state of Montana for the state reform school.

History: En. Sec. 3099, Pen. C. 1895;
re-en. Sec. 9816, Rev. C. 1907; re-en. Sec.
12514, R. C. M. 1921.

80-827. (12515) Expenses of improvements—state board of examiners. Whenever buildings are erected at the state reform school, or needed improvements are made upon buildings already erected, the accounts and expenses for the same shall be certified to the state board of examiners, and when approved, warrants shall be drawn therefor by the state auditor upon the fund designated in this act. If there are no moneys in said fund to pay

such warrants, the same shall be registered by the state treasurer, and shall draw interest at the rate of seven per cent. per annum, and shall be a lien upon any and all moneys that may hereafter be covered into such fund in the order in which they are registered. Whenever there are moneys in said fund to pay such warrants, they shall be called for payment from time to time in the mode and manner now provided by law for the payment of similar warrants. Provided, that no warrants authorized by this act shall be either sold or paid out on account of labor, materials, or on contract at less than their face value; and provided further, that the state of Montana shall not in any case be held liable for the redemption of such warrants nor the payment of the interest thereon.

History: En. Sec. 3100, Pen. C. 1895;
re-en. Sec. 9817, Rev. C. 1907; re-en. Sec.
12515, R. C. M. 1921.

CHAPTER 9

STATE VOCATIONAL SCHOOL FOR GIRLS

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|---------|---------|--|
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80-901. (12519) State vocational school for girls—establishment.

There is hereby established a state vocational school for girls, to be located at a place to be selected by the executive board hereinafter provided for, and approved by the governor and state board of education; provided, however, that the location of said school may be made temporarily for a period that in the judgment of the state board of education may be deemed sufficient, at a place where either lands or buildings for said school may be had by donation, or the payment of reasonable rent therefor.

History: En. Sec. 1, Ch. 101, L. 1919; M 58, 83, 195 P 841; State ex rel. Foot v. re-en. Sec. 12519, R. C. M. 1921. District Court et al., 77 M 290, 250 P 973.

References See generally, 26 Am. Jur. 607, Houses of Correction, Reformation and Refuge.
State ex rel. Bonner v. Dixon et al., 59

80-902. (12520) Purpose of school. Said school is to be for the care, education, training, and safekeeping of girls between the ages of eight and twenty-one years, who are legally committed thereto by a court of record.

History: En. Sec. 2, Ch. 101, L. 1919; **References**
re-en. Sec. 12520, R. C. M. 1921. State ex rel. Johnson v. Kassing, 74 M 25, 30, 238 P 582.

80-903. (12521) Who may be committed. It shall be the duty of the presiding officer of such school to receive, to the extent of the capacity of the institution, all girls committed to its care under provisions of this act, and to keep the same until they arrive at the age of twenty-one years, or until they are discharged by law, or paroled under the rules of said school.

History: En. Sec. 3, Ch. 101, L. 1919; What constitutes delinquency or incorrigibility, justifying commitment of infant. 45 ALR 1533.
re-en. Sec. 12521, R. C. M. 1921.

References Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child. 60 ALR 1342.
State ex rel. Johnson v. Kassing, 74 M 25, 31, 238 P 582. Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile courts. 123 ALR 446.

Reformatories↔5.

53 C.J. Reformatories § 9 et seq.

80-904. (12522) Executive board. There shall be an executive board, consisting of three members, to have a general supervision or control of said institution, two of whom shall be women and all of whom shall be citizens of the state, appointed by the governor, by and with the consent of the state board of education, and the principal of said institution shall be an ex officio member of said board, without a vote.

History: En. Sec. 4, Ch. 101, L. 1919; **Cross-Reference**
re-en. Sec. 12522, R. C. M. 1921; repealed Executive board, composition, powers and duties, secs. 75-303 to 75-308.
Sec. 1, Ch. 32, L. 1943; "revived" Sec. 1, Ch. 198, L. 1945.

Reformatories↔3.

53 C.J. Reformatories § 7 et seq.

80-905. (12523) Oath and bond of members. As soon as notified of such appointment each member of said executive board shall, before entering upon the duties of her or his office, take and subscribe to the oath before any qualified officer qualified to administer oaths, that she or he will faithfully perform the duties of her or his office according to law and she or he shall give a bond to the State of Montana in the sum of five thousand dollars, with good and sufficient sureties, conditioned for the faithful performance of her or his duties, which bond shall be filed in the office of the secretary of state.

History: En. Sec. 5, Ch. 101, L. 1919; Sec. 1, Ch. 32, L. 1943; "revived" Sec. 2, re-en. Sec. 12523, R. C. M. 1921; repealed Ch. 198, L. 1945.

80-906. (12524) Meetings of board—site and donations for buildings. As soon as each member of the executive board shall have complied with the requirements of the preceding section of this act, they shall meet at a

convenient place, to be decided later, and shall at once proceed to organize and elect one of their number chairman and one secretary. Thereafter said executive board shall take steps to secure a suitable tract of land of not less than one hundred sixty acres, in the name of the state of Montana, by lease, gift, or purchase, and proceed to make such improvements and erect such buildings as may be necessary for the establishment of such school. And said executive board is hereby authorized to receive in the name of the state of Montana any and all donations, gifts, or contributions to said school, whether in money, lands, labor, material, or supplies. Immediately upon securing the land as aforesaid under this act, the board shall establish a permanent office at or near such tract, and the secretary shall keep any and all books of the board, which shall be open for inspection, and she or he shall also file with the secretary of state, any and all deeds or leases conveying or leasing lands to the state of Montana for the use and benefit of said school. The chairman shall preside at all meetings of the board; superintend the performance of all contracts for labor and material which have been authorized by the board and see that the terms of each contract are faithfully performed, and shall perform such other duties as the board may direct; provided, however, that the location of said school may be made temporarily for a period that in the judgment of the state board of education may be deemed sufficient at a place where either lands or buildings for said school may be had by donation or the payment of the reasonable or necessary rent therefor.

History: En. Sec. 6, Ch. 101, L. 1919; Reformatories \Rightarrow 2.
re-en. Sec. 12524, R. C. M. 1921. 53 C.J. Reformatories § 2 et seq.

Cross-Reference

Method of making donations, sec. 75-311.

80-907. (12525) Principal, employment of. It shall be the duty of the executive board to secure and employ, as principal of the state vocational school for girls, a thoroughly competent and qualified woman whose training in the management of such an institution would make her eligible for such position; said appointment to be subject to the approval of the governor and the state board of education.

History: En. Sec. 7, Ch. 101, L. 1919;
re-en. Sec. 12525, R. C. M. 1921.

80-908. (12526) Leases of state land to executive board. The board of land commissioners of the state of Montana is hereby authorized and empowered to lease to the executive board of the state vocational school for girls for a period at their discretion, according to law, any parcel or tract of the state school lands selected by the executive board of the state vocational school for girls, at a rental value not to exceed one dollar per acre per annum; that proper contracts of lease for said land shall be executed to said executive board as soon as said board shall have sufficient funds with which to erect or improve buildings thereon. If suitable state school lands cannot be secured, as herein provided, then the executive board of the state vocational school for girls is hereby authorized to contract by lease a suitable tract of land or to purchase the same by contract or otherwise, or to receive by gift as hereinbefore provided.

History: En. Sec. 8, Ch. 101, L. 1919;
re-en. Sec. 12526, R. C. M. 1921.

80-909. (12527) Construction—advertising and letting. All contracts for the erection of buildings and for improvements and the purchase of material and supplies needed for said school shall be advertised and let by contract as provided by the law of the state of Montana, and no member of the board or officer of the school shall be interested directly or indirectly in any contract or award made by the board under penalty of forfeiture of office and fine in similar cases provided by the laws of Montana.

History: En. Sec. 9, Ch. 101, L. 1919;
re-en. Sec. 12527, R. C. M. 1921.

80-910. (12528) Meetings of board—compensation of members. The regular meetings of said board shall be held on the first Tuesdays of March, June, September, and December of each year, and special meetings may be held by order of the chairman or any two members of said board, at the place chosen for its permanent office, and each member shall receive for her or his services as member of said board, five dollars per day and actual traveling expenses incurred while attending meetings, or in attending to the transaction of any business by and under the direction of said board.

History: En. Sec. 10, Ch. 101, L. 1919; Sec. 1, Ch. 32, L. 1943; "revived" Sec. 3, re-en. Sec. 12528, R. C. M. 1921; repealed Ch. 198, L. 1945.

80-911. (12529) Principal, reports and duties of. The principal of the state vocational school for girls shall make at every regular meeting reports to the board and shall appoint and discharge all employees, teachers, and other persons connected with the institution and shall be held responsible for the conduct of the state vocational school for girls.

History: En. Sec. 11, Ch. 101, L. 1919;
re-en. Sec. 12529, R. C. M. 1921.

80-912. (12530) Annual report of executive board—vacancies. The executive board of said school shall, on or before the first Monday in June each year, make a detailed statement and report of all its transactions and of the condition of the institution, including the number of officers, teachers, and employees with the salary or wages paid to each, and a detailed statement of all expenses and disbursements of said institution, which report shall contain such other information or recommendations as may be required by the state board of examiners or the state board of education. All vacancies occurring in the membership of the executive board shall be filled by appointment by the governor, with the approval of the state board of education.

History: En. Sec. 12, Ch. 101, L. 1919; Sec. 1, Ch. 32, L. 1943; "revived" Sec. 4, re-en. Sec. 12530, R. C. M. 1921; repealed Ch. 198, L. 1945.

80-913. (12531) Term of office of ex officio and other members. The ex officio member of the executive board shall hold office while principal of the school, and those members appointed by the governor shall hold office for the terms of two years, three years, and four years, respectively, from and after the third Monday in April of the year appointed, unless sooner removed by the governor, by and with the consent of the state board of education.

History: En. Sec. 13, Ch. 101, L. 1919; Sec. 1, Ch. 32, L. 1943; "revived" Sec. 5, re-en. Sec. 12531, R. C. M. 1921; repealed Ch. 198, L. 1945.

80-914. (12532) Salaries of principal and other officers. The salary of the principal of the state vocational school for girls and of the other officers, teachers, and employees of the school shall be fixed by the executive board with the approval of the state board of education.

History: En. Sec. 14, Ch. 101, L. 1919;
re-en. Sec. 12532, R. C. M. 1921.

80-915. (12533) Curriculum. The curriculum of the school shall include home economics and such academic and vocational subjects designated by and of the standards required by the state board of education.

History: En. Sec. 15, Ch. 101, L. 1919;
re-en. Sec. 12533, R. C. M. 1921; amd. Sec.
2, Ch. 32, L. 1943.

References

State ex rel. Johnson v. Kassing, 74 M
25, 30, 238 P 582.

Cross-Reference

Education of inmates in University of
Montana, secs. 10-110 to 10-114.

Reformatories↔7.

53 C.J. Reformatories § 9 et seq.

80-916. (12534) Powers of executive board. The executive board shall have power and authority, under the direction and subject to the approval of the governor and the state board of education, to regulate the activities of the school, and from time to time, as may be necessary, to erect additional buildings, make all needful improvements, purchase machinery and tools and implements to be used in any of the industrial activities taught in said school, and have general supervision and control of the institution, and may make such rules for its management and control as may be necessary; provided, that no rule made by the board shall be in conflict with the provisions of the constitution or laws of the state; and provided further, that such buildings and improvements shall not exceed in cost the sum appropriated for such purpose.

History: En. Sec. 16, Ch. 101, L. 1919;
re-en. Sec. 12534, R. C. M. 1921; repealed
Sec. 1, Ch. 32, L. 1943; "revived" Sec. 6,
Ch. 198, L. 1945.

References

State ex rel. Johnson v. Kassing, 74 M
25, 31, 238 P 582.

80-917. Executive board not affected by act. The effect of this act shall be construed to be, that the executive board shall continue to exist as before Chapter 32, Laws of 1943, became law and as if it had not become law.

History: En. Sec. 8, Ch. 198, L. 1945.

sections 80-904, 80-905, 80-910, 80-912, 80-
913 and 80-916.

NOTE.—This section relates to the effect
of the repeal and subsequent "revival" of

80-918. (12535) Commitment of girls to vocational school. When any girl between the ages of eight and eighteen years shall, in any court of record or by any judge of the district court of this state, be found guilty of any crime except murder or manslaughter, or if for want of proper parental care is growing up as a mendicant, vagrant, or delinquent, and complaint thereof is properly made and sustained by the evidence, the court or judge may, if in his opinion the accused is a proper subject therefor, instead of entering judgment, cause an order to be entered for such girl to be sent to the state vocational school for girls, in pursuance of the provisions of this act. A copy of such order under the seal of said court, accompanied by a certificate of health, shall be sufficient warrant for carrying such girl to said school, and for her commitment to the custody of the principal

thereof; provided, however, that nothing in this section shall be construed to repeal section 12288 of this code.

History: En. Sec. 18, Ch. 101, L. 1919; re-en. Sec. 12535, R. C. M. 1921.

NOTE.—Section 12288, referred to above, was repealed by Ch. 227, L. 1943.

References

State ex rel. Johnson v. Kassing, 74 M 25, 31, 238 P 582.

Infants 69.

43 C.J.S. Infants § 96.

See generally, 26 Am. Jur. 607, Houses of Correction, Reformation and Refuge.

What constitutes delinquency or incorrigibility, justifying commitment of infant. 45 ALR 1533.

Constitutionality of statute which, for reformatory purposes, deprives parent of custody or control of child. 60 ALR 1342.

Age of child at time of alleged offense or delinquency, or at time legal proceedings are commenced, as criterion of jurisdiction of juvenile courts. 123 ALR 446.

80-919. (12536) Health certificate and order of commitment. At the time and place mentioned in the citation for a hearing or at the time and place to which the hearing may be adjourned, etc., if the parent or guardian to whom said citation may be addressed shall appear, etc., then in his or her presence, or, if he or she shall fail to appear, then in the presence of some competent person whom the said judge shall appoint as guardian for the purpose of the case, it shall be lawful for the said judge to take a voluntary statement of said girl, and hear a statement of the party appearing for her, and to take such testimony in relation to the case as may be produced; and if, upon such examination or hearing, such judge shall be satisfied that the girl is a fit subject for said state vocational school for girls, he may commit her to said school by warrant.

No girl shall be committed to said school who is subject to epileptic fits, and she must be possessed of that degree of mental and bodily health which would render her a fit subject for the training of said school.

And it shall be the duty of the court or judge committing any such girl to cause her to be examined by a reputable licensed woman physician, where such is available, who shall certify to the above facts, which certificate shall be forwarded to said state vocational school for girls with the commitment.

The commitment may be in the following form:

ORDER OF COMMITMENT

State of Montana, county of _____, ss.

In the district court, in and for the _____ judicial district, in and for said county and state.

Be it remembered, that on the _____ day of _____, 19____, _____, a minor of said county was charged on complaint of _____, brought before me, the undersigned judge of said court, and upon due proof I do find that the said _____ is a suitable person to be committed to the instruction and training of the state vocational school for girls.

Now, therefore, it is hereby ordered that the said _____ be and is hereby committed to said vocational school for girls until _____ attains the age of twenty-one years, unless she is sooner legally discharged or paroled by the executive board of said school. And I find upon the hearing of said matter that the said _____ was charged

with _____, that _____ is a resident of said county, and of the age of _____ years.

That _____ father's name is _____; he resides at _____, in the state of _____, and is by occupation a _____.

That _____ mother's name is _____, a resident of the state of _____, by occupation a _____. The names of other near relatives and their residences are as follows: _____

Witness my hand this _____ day of _____, A. D. 19_____.

Judge.

State of Montana, county of _____, ss.

I, _____, clerk of the district court of said county, do hereby certify that the Honorable _____, whose signature is appended to the foregoing order of commitment, was, at the date thereof, and now is the judge of the district court in and for said county.

In witness whereof, I have hereunto set my hand and affixed the seal of said court this _____ day of _____, A. D. 19_____.

Clerk.

By _____

Deputy Clerk.

The certificate of health may be in the following form:

CERTIFICATE OF HEALTH.

State of Montana, county of _____, ss.

_____, being first duly sworn, deposes and says: That _____ he is a practicing physician duly licensed to practice medicine and surgery in the state of Montana; that at the request of the Honorable _____, judge of the district court in and for said county, _____ he made a careful medical examination of _____ and as a result of said examination _____ he makes answer to the following questions correctly, to the best of his or her knowledge, judgment, and belief:

Has _____ a perfect vision? Ans. _____

Is _____ of sound intellect? Ans. _____

Has _____ sufficient bodily strength to receive instructions?

Ans. _____

Has _____ any tendency to scrofula or consumption?

Ans. _____

Is _____ subject to epileptic fits? Ans. _____

Has _____ had the smallpox? Ans. _____

Has _____ been vaccinated? Ans. _____

Is _____ of sufficiently sound mind and bodily health to be a proper person to commit to the state vocational school for girls?

Ans. _____

Subscribed and sworn to before me this day of,
A.D. 19.....

.....
Clerk.
By.....
Deputy Clerk.

State of Montana, county of....., ss.

I,, clerk of the district court of said county, do hereby
certify that....., whose signature is appended to the foregoing
certificate, is a reputable and respectable physician and surgeon in said
county.

In witness whereof, I have hereunto set my hand and affixed the seal
of said court this.....day of....., 19.....
(Seal)

.....
Clerk.
By.....
Deputy Clerk.

History: En. Sec. 19, Ch. 101, L. 1919;
re-en. Sec. 12536, R. C. M. 1921.

References

State ex rel. Foot v. District Court et
al., 77 M 290, 292, 250 P 973.

NOTE.—See in connection with this sec-
tion, section 82-402.

**80-920. (12537) Warrant of judge—expense of commitment and care—
Indian girls.** The judge shall certify in the warrant the place where the
girl resided at the time of her arrest; also her age as nearly as can be
ascertained, and command a woman officer to take such girl and deliver
her without delay to the principal of said school, or other person in charge
thereof, at the place where the same is located, and the showing of such
certificate for the purposes of this act shall be conclusive evidence of her
residence or age; accompanying this warrant the judge shall transmit by
the officer executing it a statement of the nature of the complaint to the
principal, together with such other particulars concerning the girl as the
judge is able to ascertain; provided, that the expense of committing such
girl to the state vocational school for girls, of the returning of her to
her parent or guardian after her release therefrom, shall be at the expense
of the county from which the girl is committed; and provided, further,
that the county from which any girl committed to the state vocational
school for girls shall be sent shall be liable for the expense attending the
care, education, training, and safe-keeping of such girl while she is in
actual physical attendance or residence in said school, and shall pay for
the same the sum of fifty cents (\$.50) per day for each girl so sent
until final discharge; and provided, further, that Indian girls who are
wards of the United States may be committed by a court of competent
jurisdiction and shall be eligible to, and shall be admitted to such school
upon the payment or assurance of payment by the Indian Department for
each Indian ward admitted a sum of money, the amount of which shall
be determined by a careful estimate of the whole per capita cost of the
school during the year immediately preceding the date of commitment, and
the principal shall bill the proper agency therefor. On the first of every
month the principal of said vocational school for girls shall prepare and

80-920
Amended
L. '51, c. 73
Sec. 1, p. 126

transmit to the respective boards of county commissioners of the several counties liable for such care, education, and safe-keeping a certificate showing in detail the persons on whose account such expense was incurred, the amount due on account of each such person respectively for the month preceding, and the said board of commissioners shall allow the said sum so certified against the respective counties, and shall pay the same by warrant to the state vocational school for girls, the same as any other current expense of said county.

History: En. Sec. 20, Ch. 101, L. 1919;
re-en. Sec. 12537, R. C. M. 1921; amd. Sec.
1, Ch. 214, L. 1947.

References
State ex rel. Johnson v. Kassing, 74 M
25, 238 P 582.

80-921. (12538) Powers of judges—review of proceedings. The judge of any district court of any county in the state may, either in chambers or in term time, proceed under the provisions of this act; provided, that any proceedings had before the judge in chambers in any county at a time when the district court of said county is not in session shall be entered and recorded in the minutes of said court on the first day of the ensuing term. Any and all proceedings before the district court, or judge thereof, may be reviewed on writ of error by the supreme court, and in the manner provided by law for reviewing criminal cases in said supreme court.

History: En. Sec. 21, Ch. 101, L. 1919;
re-en. Sec. 12538, R. C. M. 1921.

80-922. (12539) Term of commitment—paroles. Each girl committed to the state vocational school for girls shall remain there until she arrives at the age of twenty-one years, unless paroled or legally discharged; provided, that it shall be lawful for the executive board to discharge therefrom any girl, an inmate thereof, who has arrived at the age of eighteen years, if it be made to appear that while there as an inmate she deported and conducted herself in such a manner as to make it reasonably probable that she has reformed and is a proper person to be discharged.

History: En. Sec. 22, Ch. 101, L. 1919;
re-en. Sec. 12539, R. C. M. 1921.

Reformatories—10.
53 C.J. Reformatories § 17 et seq.

References

State ex rel. Foot v. District Court et al.,
77 M 290, 292 et seq., 250 P 973.

80-923. (12540) Commutations of punishment to commitment to vocational school. Whenever any girl under the age of eighteen years has been sentenced by any court of competent jurisdiction to imprisonment in the state prison, it shall be lawful for the governor, by and with the approval of the board of pardons, upon the application of such girl, her parent or guardian, to commute the punishment by substituting therefor the commitment of such girl to the state vocational school for girls during the minority of said girl, unless sooner discharged by the executive board, under the regulations as herein provided. But should such girl, after being sent to such school, persist in a depraved course, or escape therefrom, it shall be in the power of the governor, by and with the approval of the board of pardons, to revoke such commutation and remand her to

the state prison to serve out her unexpired term, and the time so spent by her at the state vocational school for girls, or while a refugee therefrom, shall not be considered as a part of her original term of commitment.

History: En. Sec. 23, Ch. 101, L. 1919; Prisons↔13; Reformatories↔9.
re-en. Sec. 12540, R. C. M. 1921. 50 C.J. Prisons § 27; 53 C.J. Reformatories § 16.

80-924. (12541) Release and discharge. The executive board, on recommendation of the principal of the school may release a girl on trial or parole, but in all cases where a girl is released on parole, she must, at stated intervals, report her conduct to the principal and present certificates of good behavior, whereupon her leave or parole may be extended, or the executive board, by a unanimous vote, may grant her a full and unconditional discharge and order her finally released from the custody and control of such school. It shall be the duty of the principal to recall and return to the school any girl who is not conducting herself properly, or who may not have a suitable home, and for such purpose such vocational school shall have sole custody and control over any girl so paroled until she shall have reached the age of twenty-one (21) years, or until she shall be finally discharged.

History: En. Sec. 24, Ch. 101, L. 1919; Reformatories↔8.
re-en. Sec. 12541, R. C. M. 1921; amd. Sec. 53 C.J. Reformatories § 7 et seq.
1, Ch. 62, L. 1947.

80-925. (12542) Return of fugitives. Any fugitive from said institution may be arrested and returned to said institution by any executive, county or state officer, who shall at once return her to said institution.

History: En. Sec. 25, Ch. 101, L. 1919; Reformatories↔7.
re-en. Sec. 12542, R. C. M. 1921. 53 C.J. Reformatories § 9 et seq.

80-926. (12543) Rescuing inmates or permitting escapes—punishment. Every person who rescues or attempts to rescue, or aids any other person in rescuing, or attempting to rescue, any inmate of, in or from the vocational school for girls, or from any person or officer having her in lawful custody, or who shall contrive, procure, connive at, or otherwise voluntarily aid in or suffer the escape of any inmate of, in or from said school, shall, on conviction thereof, be punished by imprisonment in the state prison for a period of not less than six (6) months nor more than two (2) years, or be fined in a sum not exceeding one thousand dollars (\$1000.00), or by both such fine and imprisonment.

History: En. Sec. 26, Ch. 101, L. 1919; Escape↔5; Rescue↔1.
re-en. Sec. 12543, R. C. M. 1921; amd. Sec. 30 C.J.S. Escape §§ 19-24.
1, Ch. 196, L. 1937.

80-927. Penalty for assisting escapes. Every person who wilfully assists any inmate committed to or confined in such school or in the lawful custody of any officer or person to escape, or in an attempt to escape from such school or custody, is punishable as provided in the preceding section.

History: En. Sec. 2, Ch. 196, L. 1937.

80-928. (12544) Furnishing tools to aid in escape—punishment. If any person shall carry to any inmate of said school any tool, weapon, or other aid with intent to enable any inmate thereof to escape from custody or confinement, whether such escape be effected or not, any person so offending,

on conviction thereof, shall be punished by a fine of not more than five hundred dollars, or imprisonment in the state prison for a period of not more than two years, or both such fine and imprisonment.

History: En. Sec. 27, Ch. 101, L. 1919;
re-en. Sec. 12544, R. C. M. 1921.

80-929. (12545) Rewards for apprehension of escaped persons. If any girl who has been committed to the state vocational school for girls shall escape therefrom, the governor or acting governor is authorized to offer a reward for her apprehension, which reward shall not exceed the sum of one hundred dollars, and shall be paid out of the state treasury, and the amount which any governor or acting governor of this state may offer as the reward for the apprehension of any inmate as aforesaid is hereby appropriated, and it is hereby made the duty of the state auditor to issue to the person or persons whom he may determine are entitled to such reward a warrant on the state treasury therefor.

History: En. Sec. 28, Ch. 101, L. 1919; Rewards↔4.
re-en. Sec. 12545, R. C. M. 1921. 54 C.J. Rewards § 7 et seq.

80-930. (12546) Transfer of inmates. At such time as said school is open and ready for occupancy, all girls who are in the custody of the authorities of the industrial school at Miles City shall be then transferred to the state vocational school for girls.

History: En. Sec. 29, Ch. 101, L. 1919; Reformatories↔9.
re-en. Sec. 12546, R. C. M. 1921. 53 C.J. Reformatories § 16.

CHAPTER 10

ADMISSION OF FEMALES TO REFORMATORY INSTITUTIONS

- Section 80-1001. Admission of female persons to reformatory institutions.
80-1002. Commitment to industrial school—when changed to other institutions.
80-1003. Commitment of female persons for certain offenses.
80-1004. Qualifications of institutions.
80-1005. Compensation of institutions.
80-1006. Annual reports of institutions.

80-1001. (12547) Admission of female persons to reformatory institutions. Any female person may at any time apply to the secretary of the bureau of child and animal protection to be admitted to any institution in this state devoted to the purpose of reclaiming or reforming unchaste women, or such as are likely to become so, whereupon such secretary may, in his discretion, make an order directing that such person may be committed to such institution for such period as in his judgment may be necessary.

History: En. Sec. 1, Ch. 131, L. 1909; Reformatories↔5.
re-en. Sec. 12547, R. C. M. 1921. 53 C.J. Reformatories § 2 et seq.

NOTE.—The bureau of child and animal protection has been abolished and its duties assumed by the state public welfare department: See Sec. 71-202. See generally, 26 Am. Jur. 607, Houses of Correction, Reformation and Refuge.

80-1002. (12548) Commitment to industrial school—when changed to other institutions. Whenever under any law of this state any court, judge, or magistrate is authorized to commit any person brought before him to the

industrial school, he may, if such person be a female, order, instead, that such person be committed to and confined in some institution, such as is designated in the preceding section, and there kept in custody for such period, during the minority of such person, as he may direct, and there-upon such proceedings shall be taken as are provided by law in case of commitments to the industrial school.

History: En. Sec. 2, Ch. 131, L. 1909;
re-en. Sec. 12548, R. C. M. 1921.

80-1003. (12549) Commitment of female persons for certain offenses.

Whenever any female person is convicted before any court or magistrate of drunkenness, disorderly conduct, or vagrancy, she may, at the discretion of the court, or the judge thereof, in lieu of the punishment prescribed by the law or ordinance under which such conviction was had, be committed to some institution, such as is mentioned in section 80-1001, for not more than one year.

History: En. Sec. 3, Ch. 131, L. 1909;
re-en. Sec. 12549, R. C. M. 1921.

80-1004. (12550) Qualifications of institutions. Any institution may qualify itself for the reception of inmates, under the provisions of this act, by filing in the office of the secretary of state a statement to the effect that it is an institution of the character mentioned in section 80-1001, and setting out the number of inmates it can accommodate, which said statement shall be verified by the acting head of such institution.

History: En. Sec. 4, Ch. 131, L. 1909; Reformatories[Ⓒ]1.
re-en. Sec. 12550, R. C. M. 1921. 53 C.J. Reformatories § 2 et seq.

80-1005. (12551) Compensation of institutions. The person, corporation, or association conducting any such institutions shall be entitled to compensation from the county from which any inmate is sent or admitted, as provided in this act, at the rate of ten dollars per month, to be allowed and paid as other claims against the county are paid.

History: En. Sec. 5, Ch. 131, L. 1909; Reformatories[Ⓒ]11.
re-en. Sec. 12551, R. C. M. 1921. 53 C.J. Reformatories § 13 et seq.

80-1006. (12552) Annual reports of institutions. Each such institution shall annually, on or before the first day of January in each year, make a report to the governor showing the number of inmates in such institution, the number admitted under the provisions of this act, and the total amount paid to it by virtue of it.

History: En. Sec. 6, Ch. 131, L. 1909;
re-en. Sec. 12552, R. C. M. 1921.

TITLE 81

STATE LANDS

- Chapter 1. Department of state lands and investments—general provisions, 80-101 to 81-104.
2. Commissioner of state lands and investments, 81-201 to 81-209.
 3. Selection—classification, appraisal and exchange of lands, 81-301 to 81-305.
 4. Leasing of agricultural lands—grazing lands and city and town lots, 81-401 to 81-431.
 5. Coal mining leases and permits, 81-501 to 81-510.
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 14. State forests—forester—timber sales—fire wardens, 81-1401 to 81-1416.
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CHAPTER 1

DEPARTMENT OF STATE LANDS AND INVESTMENTS— GENERAL PROVISIONS

- Section 81-101. Department of state lands and investments created—purpose.
81-102. Definitions.
81-103. Powers and duties of state board of land commissioners.
81-104. Meetings of the board—preservation of records.

81-101. (1805.1) Department of state lands and investments created—purpose. There is hereby created a department of the government of the state of Montana to be known and designated as the "Department of State Lands and Investments." The general purpose of this department shall be to administer the federal land grants made to the state of Montana, and the other state lands, and the funds arising from these lands, and the funds coming under its control through the provisions of article XXI of the state constitution, or otherwise, as hereinafter more specifically provided.

History: En. Sec. 1, Ch. 60, L. 1927.

Cross-References

NOTE.—For earlier acts relating to state lands see sections 3470-3595, political code 1895, sections 2152-2237, revised codes 1907, and 1805-1948, R. C. M., 1921. California statutes relative to public lands are sections 3395-3574, Pol. C.

Committing waste or trespass on state lands, secs. 94-1518, 94-3334.

State parks, sec. 62-301 et seq.

References

Nemitz v. Reckards et al., 98 M 229, 38 P 2d 980. States 45.
59 C.J. States § 143½.
42 Am. Jur. 781, Public Lands, generally.

81-102. (1805.2) Definitions. In this act, the term "department" shall mean the department of state lands and investments; the term "board" shall mean the state board of land commissioners; the term "commissioner" shall mean the commissioner of state lands and investments; the term "assistant commissioner" shall mean the assistant commissioner of state lands and investments; the term "state land" or "lands" shall mean and include all lands that have heretofore been granted and that hereafter may be granted to the state by the United States for educational purposes or for any other purpose, either directly or through exchange for other lands; all lands that have become the property of the state through deed or devise from any person; all lands to which the state has become the owner through a mortgage to the state, either by foreclosure or otherwise; and all lands that have become the property of the state through the operation of law, except, however, such of these lands as the state has sold and conveyed through the issuance of patent; and except also lands that are used as building sites, campus grounds, or for experimental purposes by any of the state institutions, and have become the property of such institutions; the term "mortgage land" or "mortgage lands" shall mean land or lands to which the state has become the owner through a mortgage thereon either by foreclosure or otherwise.

History: En. Sec. 2, Ch. 60, L. 1927.

81-103. (1805.3) Powers and duties of state board of land commissioners. The state board of land commissioners, consisting of the governor, superintendent of public instruction, secretary of state and attorney general, as provided by the constitution, shall be the governing board of the department of state lands and investments; it shall have and exercise general authority, direction and control over the care, management and disposition of all state lands and the funds arising from the leasing, use, sale and disposition of such lands or otherwise coming under its administration. In the exercise of these powers, the guiding rule and principle shall be that these lands and funds are held in trust for the support of education, and for the attainment of other worthy objects helpful to the well being of the people of this state; and that it is the duty of the board so to administer this trust as to secure the largest measure of legitimate and reasonable advantage to the state. The enumeration in this act of specific powers conferred upon the board shall not be so construed as to deprive the board of other powers not enumerated but inherent in the general and discretionary powers conferred by the constitution, and necessary for the proper discharge of its duties; but there can be no such implied powers inconsistent with any part of the constitution, nor shall any inherent powers be assumed to exist which would be inconsistent with any statutory provision or with the general rule and principle herein stated.

History: En. Sec. 3, Ch. 60, L. 1927.

Implied Powers Must Not be Inconsistent with the Constitution

The state board of land commissioners is a state agency and has only such powers

as are expressly conferred and such implied powers are essential to the exercise of those expressly granted, and under the rule that under this section its implied powers must not be inconsistent with any part of the constitution, held, that a sale

of a tract of 160 acres of state lands lying within three miles of a city or town and falling within class four of sec. 1, art. XVII of the constitution, which under sec. 2 thereof could only be sold in alternate lots of not more than five acres each, was void. State ex rel. Boorman v. State Board of Land Commissioners, 109 M 127, 133, 94 P 2d 201.

Lapse of Time Not Confirming a Void Act

In a proceeding in mandamus, commenced in 1937, to compel the state board

of land commissioners to refund the purchase price of a tract of state land sold in 1910, in violation of art. XVII, secs. 1 and 2, const., the defenses of laches and statute of limitations may not be relied upon, lapse of time not confirming a void act. Under sec. 81-1109, board may refund money. State ex rel. Boorman v. State Board of Land Commissioners, 109 M 127, 133, 94 P 2d 201.

Public Lands ~~6~~ 158½.

50 C.J. Public Lands § 648.

81-104. (1805.4) Meetings of the board—preservation of records. The board shall hold regular meetings on the second Wednesday of each month, and may hold special meetings whenever deemed necessary, upon call of the president or a majority of the members. Three members of the board shall constitute a quorum for the transaction of business. The governor shall be the president of the board; in his absence and the absence of the lieutenant governor, the superintendent of public instruction shall preside. The board may adopt whatever rules and regulations it deems proper for the conduct of its meetings. It shall cause complete minutes to be kept of its proceedings in a suitable book provided for that purpose and all important documents, maps, plats and papers to be properly cared for and preserved.

History: En. Sec. 4, Ch. 60, L. 1927.

CHAPTER 2

COMMISSIONER OF STATE LANDS AND INVESTMENTS

- Section 81-201. Appointment of commissioner—manner of qualifying.
 81-202. State forester.
 81-203. Appointive powers of commissioner—management of office.
 81-204. Powers and duties of commissioner—ex officio secretary of the board.
 81-205. Reports by state treasurer.
 81-206. Biennial report by commissioner.
 81-207. Duties of chief field agent.
 81-208. Oath of office and bonds.
 81-209. Salaries and compensation—persons now appointed to hold office during terms for which appointed—appropriations.

81-201. (1805.5) Appointment of commissioner—manner of qualifying. The governor, by and with the consent of the senate, shall appoint a commissioner of state lands and investments, who shall be the chief administrative and executive officer under the board in all matters except those pertaining to the state forests, who shall not be a member of the state board of land commissioners and whose term of office shall be four years, or until his successor has been appointed and qualified. Before assuming the duties of his office, the commissioner shall take and subscribe to the constitutional oath of office and shall provide a surety company bond in the amount of twenty-five thousand dollars (\$25,000.00) conditioned for the faithful discharge of his duties, which bond shall be subject to the approval of the board and filed with the secretary of state; the premium thereon shall be paid by the state as the bonds of other state officials.

History: En. Sec. 5, Ch. 60, L. 1927. . . 59 C.J. States §§ 186 et seq., 190 et seq., 198 et seq., 205 et seq., 208 et seq.
States 46, 48, 51.

81-202. (1805.6) State forester. The state forester shall be the chief administrative and executive officer under the board in all matters pertaining to the state forests. His powers, duties, qualifications, compensation and entire status shall be as now provided by law.

History: En. Sec. 6, Ch. 60, L. 1927. Woods and Forests 7.
71 C.J. Woods and Forests § 23.

81-203. (1805.7) Appointive powers of commissioner—management of office. The commissioner shall have the authority to appoint one cashier, one secretary, one chief field agent, and such number of assistant field agents, clerks, stenographers and other employees as he may deem necessary for the proper performance of the work of his office, subject, however, to the approval of the state board of examiners as to the number of clerks and stenographers and employees. He shall also have authority to prescribe rules and regulations, not inconsistent with law, for the organization and management of his office, for the conduct of the office and field forces, for the distribution and performance of its business, and the custody, use and preservation of its records, papers, books, documents, equipment and other property.

History: En. Sec. 7, Ch. 60, L. 1927; States 50, 53.
amd. Sec. 2, Ch. 138, L. 1943. 59 C.J. States §§ 187, 188, 207.

81-204. (1805.8) Powers and duties of commissioner—ex officio secretary of the board. He shall be ex officio the secretary of the state board of land commissioners, keep the minutes of its proceedings, be the custodian of its seal and records and carry out its orders. Under the direction of the board and all legal provisions governing such business, and through the proper officers, agencies and persons herein provided, he shall have charge of the selecting, exchange, classification, appraisal, leasing, management, sale and other disposition of the state lands and the investment of the funds arising therefrom or otherwise coming under the administration of the department. He shall perform such other duties as the board may direct, the purpose of the department seems to demand, or the statutes require. He shall collect and receive all moneys payable to the state through his office as fees, rentals, royalties, interest, penalties, payments on mortgages or lands purchased from the state or derived from any other source, and shall issue triplicate receipts for each and all of such payments, one of which shall be mailed or delivered to the payor, and one retained in his office. On or before the fifteenth day of each month and also on or before the thirtieth day of each month he shall report and pay over to the state treasurer all moneys received since the last previous settlement for which final receipts have been issued; at the same time he shall turn over to the state auditor all triplicates of the receipts issued during that period.

History: En. Sec. 8, Ch. 60, L. 1927.

81-205. (1805.9) Reports by state treasurer. On or before the tenth day of each calendar month, the state treasurer shall report to the commissioner the amount of money received by him during the preceding month from each source, except from the commissioner, for each income fund and

each permanent fund arising from a federal land grant or otherwise under the control of the state board of land commissioners; also the amount paid out from each such income fund or permanent fund during such month and the object of such payment; and also the balance uninvested in each such fund; these reports shall be on such forms and contain such additional information as the commissioner shall prescribe and the board approve.

History: En. Sec. 9, Ch. 60, L. 1927.

81-206. (1805.10) Biennial report by commissioner. On or before the first day of December of each even numbered year the commissioner shall prepare and publish a report giving summaries of all important transactions of his office during the two preceding fiscal years terminating on June 30th of that year, and also showing fully the amount of all assets belonging to each of the permanent funds and income funds under the administration of the department as of that date, together with such other information relating to the affairs of the department as the board or the commissioner may deem worthy of publication. He shall also from time to time furnish such information and make such additional reports as the good of the department may seem to demand or the board require.

History: En. Sec. 10, Ch. 60, L. 1927.

81-207. (1805.12) Duties of chief field agent. Under the direction of the commissioner, the chief field agent shall have charge of all the field work of the department, except the work falling under the office of the state forester, and shall perform such additional services and duties as the commissioner may from time to time designate; during the absence or disability of the commissioner he shall perform all the duties of the commissioner.

History: En. Sec. 12, Ch. 60, L. 1927;
amd. Sec. 3, Ch. 138, L. 1943.

81-208. (1805.13) Oath of office and bonds. The assistant commissioner, the chief field agent, and the cashier shall each take and subscribe to the constitutional oath of office before entering upon his duties and shall provide a surety company bond conditioned for the faithful discharge of his duties, which bonds shall be in such amount as the state board of land commissioners may designate, the bonds to be approved by the state board of land commissioners and filed with the secretary of state. The premium on such bonds shall be paid by the state as other bonds of state officials. The board may require any other officer or employee of the department to furnish a surety company bond in such amount as it may designate.

History: En. Sec. 13, Ch. 60, L. 1927. States 48.

NOTE.—See sec. 6-101 which fixes the bonds of the registrar, assistant registrar and deputy registrar of state lands. 59 C.J. States § 198 et seq.

81-209. (1805.14) Salaries and compensation—persons now appointed to hold office during terms for which appointed—appropriations. The salary of the commissioner shall be thirty-six hundred dollars (\$3600.00) per annum; the salary of the assistant commissioner shall be twenty-four hundred dollars (\$2400.00) per annum; and the salary of the chief field agent shall be three thousand two hundred and fifty dollars (\$3250.00) per

81-209
(1805.14 RCM
'35)
Amended
SL '49, C. 176
Sec. 1, P. 378

81-209
Amended
L. '51, c. 164
Sec. 1, p. 321

annum. The salaries of each one of these three officials and of all clerks and stenographers and field men and other employees of the department shall be payable monthly from the state general fund. In addition to these salaries, each one of the aforesaid officers shall be paid actual and necessary expenses while engaged in the performance of his official duties outside the state capital.

The persons now appointed, qualified and acting as register of state lands, deputy register of state lands, and as state land agent shall respectively serve as commissioner of state lands and investments, as assistant commissioner of state lands and investments, and as chief field agent during the terms for which they have been appointed as register of state lands, as deputy register of state lands, and as state land agent.

All balances of appropriations made for the office of register of state lands and for the office of the state land agent for the fiscal year ending June 30th, 1927, and all appropriations for these two offices for the two ensuing fiscal years terminating June 30th, 1929, shall be deemed appropriations for the office of the commissioner of state lands and the chief field agent and shall be available for the use of such offices and officers.

The salaries and compensations of all the other officers, agents and employees of the department shall be fixed by the state board of examiners and paid from the state general fund, but if such board fails to fix the same, then the commissioner may determine the amount of their compensation. No employee of the department of state lands and investments who is paid a fixed compensation shall receive pay for any extra services rendered by him unless expressly authorized by law.

History: En. Sec. 14, Ch. 60, L. 1927. 59 C.J. States §§ 58, 249 et seq., 253 et seq.
States 60, 61.

CHAPTER 3

SELECTION—CLASSIFICATION, APPRAISAL AND EXCHANGE OF LANDS

- Section 81-301. Selection and location of lands granted by United States.
81-302. Classification—reclassification—records.
81-303. Board to prescribe further rules for appraisal.
81-304. Exchange of lands with United States and counties—validation of prior actions.
81-305. Exchange of lands with state water conservation board.

81-301. (1805.15) Selection and location of lands granted by United States. Under the general direction of the state board of land commissioners and as rapidly as the appropriations for the work will permit, the commissioner shall with all reasonable diligence cause to be selected and located all lands, except timber lands, which have heretofore been granted or which may hereafter be granted to this state by the United States for any purpose whatsoever, and not located by the grant itself. He shall also with all due diligence cause to be selected and located lands in lieu of all those lands in sections sixteen and thirty-six and in the other federal land grants which for any reason whatsoever have been lost to the state; he shall cause to be performed without any unnecessary delay on his part all work necessary for the completion of these selections so that the state may actually receive all the lands under its various grants. All selections and lieu selections

shall as far as possible be in legal subdivisions. In the selection and location of these lands, careful attention shall be given to the water available and which may be appropriated for such lands for domestic use, live-stock and irrigation.

History: En. Sec. 15, Ch. 60, L. 1927.

81-302. (1805.16) Classification—reclassification—records. The lands of the state of Montana shall be classified according to the provisions of the constitution as follows:

Class 1. Grazing lands, being all those lands which are valuable only for grazing purposes.

Class 2. Timber lands, being all those lands which are principally valuable for the timber that is on them.

Class 3. Agricultural lands.

Class 4. Lands within the limits of any town or city or within three miles of such limits.

The third class, agricultural lands, shall be subdivided into two classes as follows:

(a) Irrigable lands.

(b) Nonirrigable lands.

The fourth class shall be subdivided as follows:

(a) Lands within the limits of any town or city.

(b) Lands not within such limits but within three miles thereof.

The classification shall be so made as to place each forty-acre tract or lot in the class to which it properly belongs.

Whenever lands formerly nonirrigable have become irrigable, and whenever new towns or cities are located and platted, and in all other cases when the board deems it necessary, the lands affected shall be reclassified so that no state land will be sold under a different classification from that to which it actually belongs.

All field books, plats, maps and records of the department shall show the class to which each tract therein belongs, and they shall also show whether it belongs to the public schools of the state or to what state institutions or other entity it belongs according to the grant or instrument by which title to such land has passed to the state of Montana; they shall also show whether or not the coal or other minerals in the land are reserved by the United States, and shall contain such further information as the commissioner may deem necessary.

History: En. Sec. 16, Ch. 60, L. 1927.

81-303. (1805.18) Board to prescribe further rules for appraisal. The board shall prescribe such further rules and regulations for the appraisal of state lands as it may deem necessary, not inconsistent with the provisions of this act or the state constitution.

History: En. Sec. 18, Ch. 60, L. 1927.

81-304. (1805.19) Exchange of lands with United States and counties—validation of prior actions. The state board of land commissioners of the state of Montana is hereby authorized and empowered to enter into contracts or agreements with the United States, or any department thereof having jurisdiction for the waiving and relinquishment to the United States

81-304
Amended
L. '51 c. 117
Sec. 1, p. 199

81-304
Ref. to
L. '51, c. 167
Sec. 1, p. 336

of any and all rights of the state of Montana in and to sections 16 and 36 of any township and to any other sections of state lands when such sections are situated within or adjoining a federal forest reserve, or within or adjoining other federal land reservations, provided that the state of Montana shall in lieu of the rights so waived and relinquished receive from the United States other lands of an equal area and not inferior in value. The lands so obtained by the state of Montana from the federal government in exchange for lands to which the state has waived and relinquished its rights shall preferably be forest lands, it being the main purpose of these provisions to enable both the United States and the state of Montana to consolidate its forest holdings; but if desirable forest land cannot be obtained for such state lands, then other lands may be selected.

The state board of land commissioners of the state of Montana is hereby authorized to accept on behalf of the state of Montana title in fee simple to any land owned by a county in the state of Montana and to convey in exchange therefor state owned land of approximately the same area and of a value not higher than the land received from the county whenever such exchange will result in consolidating the state owned lands into more compact bodies.

All contracts and agreements heretofore entered into between the state board of land commissioners and the United States, or any department thereof, waiving and relinquishing the rights of the state of Montana to sections 16 and 36 in any township in this state, and the selection of lands in lieu of those so relinquished by the state are hereby ratified, confirmed and validated.

History: En. Sec. 19, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 151, L. 1933.

81-305. Exchange of lands with state water conservation board. The state board of land commissioners of the state of Montana is hereby authorized to accept on behalf of the state of Montana title in fee simple to any land in the state of Montana owned by or title to which may be hereafter acquired by the state water conservation board of the state of Montana, and to convey in exchange therefor state owned land of approximately the same area and of a value not higher than the land received from the state water conservation board whenever such exchange will be beneficial or essential to the construction, maintenance or operation of any project now under construction or which may hereafter be approved by said state water conservation board for construction under the provisions of sections 89-101 to 89-141, and whenever such exchange will also be advantageous to the land grant from which land is to be exchanged with the state water conservation board.

History: En. Sec. 1, Ch. 168, L. 1937.

CHAPTER 4

LEASING OF AGRICULTURAL LANDS—GRAZING LANDS AND CITY AND TOWN LOTS

- Section 81-401. Policy of state as to appraisal and leasing state land.
81-402. Lease of state lands—crop share rental basis used.
81-403. Annual rental for grazing land.
81-404. Appraisal of grazing lands.

Tit. 81, c. 4
New matter
L. '51, c. 229
Secs. 1-3
pp. 609-611

- 81-405. Renewal leases—preference right of lessee.
- 81-406. Arbitrators to fix value of improvements—appeal.
- 81-407. Who may lease—how much and for what length of time.
- 81-408. Lease expiration dates.
- 81-409. Determination of rental value.
- 81-410. Lease rentals for part year.
- 81-411. No reduction for summer fallow.
- 81-412. Rental, when due—cancellation for nonpayment.
- 81-413. Land to be leased in compact bodies.
- 81-414. Change in terms of lease.
- 81-415. Conditions of leases—cancellation for violation of rules.
- 81-416. Form of lease—bond.
- 81-417. Share rent.
- 81-418. Liens on crops and improvements.
- 81-419. Assignment of leases—preferences—fee.
- 81-420. Acquisition of water right by lessee.
- 81-421. Compensation for improvements.
- 81-422. Cancellation of leases.
- 81-423. Leasing regulations.
- 81-424. Lease of state-owned land to United States for military purposes authorized.
- 81-425. Pledge or mortgage of leasehold interest in state lands.
- 81-426. Filing with state required—fee.
- 81-427. Transfer of lease, when.
- 81-428. Proof of termination of lease or pledge to be filed—fee.
- 81-429. Application of act.
- 81-430. Effect of partial unconstitutionality.
- 81-431. Repealing clause and exception.

81-401. Policy of state as to appraisal and leasing state land. It is hereby declared to be the policy of the state, that in the interest of accomplishing a sustained income for the school and other trust funds to be derived from land grant and other state lands, agricultural and grazing lands and town and city lots shall be appraised from time to time as to their rental value, by competent appraisers, or appraiser, and the fair rental value of such lands so determined from time to time; and that agricultural lands be hereafter leased, or lease term renewed or extended, only upon a crop share basis, and that no lease be made or renewed, or the lease term extended, on any other basis, except in unusual cases, and then only upon approval by the state board of land commissioners set forth in their minutes of proceedings specifying the unusual conditions to justify the leases; and that grazing lands be hereafter leased, or lease term renewed or extended, only upon the basis of animal unit carrying capacity of the land for twelve month grazing period per calendar year, as determined by the appraisal, and at a rate of money for an animal-unit-month to be determined by the legislature from time to time, and in the absence of such determination at the rate of twenty cents (20c) per animal-unit-month.

History: En. Sec. 1, Ch. 207, L. 1945.

81-402. (1805.20) Lease of state lands—crop share rental basis used.
 (1) Under the general direction and control of the state board of land commissioners, the commissioner shall lease all agricultural and grazing lands and all town and city lots open to leasing upon proper application, provided that, as to agricultural lands, all leases now outstanding (for the next and succeeding years hereafter) and all leases hereafter made, and all renewals of leases, shall be continued or made upon a crop share rental basis of not less than one-fifth ($1/5$) of the annual crops to the state, or the usual landlord's share prevailing in the district, whichever is greater.

(2) In unusual cases the board may authorize a lease upon other basis than crop share, but in all such unusual cases the board shall set forth in its minutes of approval the unusual conditions of the case and the rental to be charged, and by unusual conditions is meant a proposed use of the land for other than the annual production of agricultural crops justifying, in the opinion of the board, a greater money rental of the land than the value of the usual landlord's share of annual agricultural crops in the area in which the land is situated, and provided further that, from and after February 28, 1952, the rental rate for all state grazing lands leased and to be leased shall be based upon the appraised animal-unit-month carrying capacity of the land multiplied by the rate per animal-unit-month as fixed in this act, and provided further that, as to town and city lots owned by the state, the fair rental value thereof shall be determined from time to time under the direction of the commissioner and with the approval of the state board of land commissioners and record made thereof, and such town or city property may be leased at its current appraised rental value for terms of not to exceed five (5) years.

(3) All leases of agricultural or grazing lands, or town or city lots shall be upon condition that the state board of land commissioners may in its discretion, offer said land for sale at any regular public sale of state lands held in the county where the land is situated, upon the same terms, and in the same manner as land not under lease.

History: En. Sec. 20, Ch. 60, L. 1927;
amd. Sec. 2, Ch. 207, L. 1945; amd. Sec.
1, Ch. 254, L. 1947.

81-403. Annual rental for grazing land. From and after February, 1952, the annual rental to be reserved to the state in leases of grazing lands shall be at the rate of twenty cents (20c) per animal-unit-month of carrying capacity of the land as determined by the commissioner of the department of state lands and investments with the approval of the state board of land commissioners, for a grazing period of twelve (12) months for a calendar year. By "animal unit" is meant one cow, one horse, or five sheep six months old or over. By "animal-unit-month" is meant an animal unit grazed, or to be grazed, on a tract of land for thirty (30) days.

History: En. Sec. 3, Ch. 207, L. 1945;
amd. Sec. 2, Ch. 254, L. 1947.

81-404. Appraisal of grazing lands. (a) It shall be the duty of the commissioner, as rapidly as practicable, to cause the grazing land owned by the state to be appraised as to its animal-unit-month carrying capacity, and to make and preserve record thereof in his office, and to from time to time cause said lands to be re-examined as to their animal-unit-month carrying capacity so as to keep the records thereof in his office reasonably accurate.

(b) In appraising such grazing lands the following factors shall be taken into consideration:

1. Inventory of the forage resources:—kind, amount and location of vegetation.
2. Accessibility and usability of this forage resource as influenced by topography, availability of stock water and season of usability.
3. Condition of soils—the erosion situation.

81-403
(SL '47, C. 254
Sec. 2)
Repealed
SL '49, C. 190
81-403
New matter
L. '51, c. 229
Secs. 1-3
pp. 609-611

81-404
(SL '45, C. 207
Sec. 4)
Ref. to
SL '49, C. 190
Sec. 2, P. 455

4. Other and related resources—such as timber, game animals, need for watershed protection.

5. Record of needed improvements and facilities—fuel and stock water, re-vegetation, rodent control, trails, fences, and the like.

6. Pertinent facts and figures submitted by stockmen living in the area and directors of state grazing districts including the land or in its vicinity.

7. Carrying capacity set for similar land in a state grazing district in which the land is situated.

History: En. Sec. 4, Ch. 207, L. 1945.

81-405. (1805.21) Renewal leases—preference right of lessee. A lessee of state land classed as agricultural, grazing, town lot or city lot, or in any of those classes, who has paid all rentals due from him to the state and who has not violated the terms of his lease shall be entitled to have his lease renewed for an additional period of not exceeding ten (10) years in the case of agricultural or grazing land, and not to exceed five (5) years in the case of town or city lots, at any time within thirty (30) days prior to its expiration, or within thirty (30) days after notice of termination date of the lease is mailed to the lessee at his address shown on the records of the lease in the department, whichever date is later, and at the rental rate applicable to the particular land established in the manner provided by law for the renewal period, and subject to any other conditions, at the time of the renewal, as may by law be imposed as terms of such leases, and except as in this section provided, applications for lease of lands in this section referred to shall be given preference in the order of their receipt at the office of the commissioner in Helena; provided, the state board of land commissioners shall have the power to withdraw any agricultural or grazing state land from further leasing for such period as the board may determine to be in the best interest of the trust fund provided all bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands under section 81-409 shall be in writing and sealed and shall be submitted to the state board of land commissioners at the office of the commissioner, and a lessee who has paid all rentals due from him to the state and not violated the terms of his lease, shall be entitled to have his lease renewed under section 81-409 at any time within thirty (30) days prior to its expiration if no other application or applications for lease of the land have been received thirty (30) days prior to the expiration of his lease, or in case such other application or applications have been received the holder of the lease, if he has paid all rentals due to the state and not violated the terms of his lease, shall have the preference right to lease the land covered by his former lease to the extent that he may take the lease at the highest bid made by any other applicant.

History: En. Sec. 21, Ch. 60, L. 1927; amd. Sec. 1, Ch. 65, L. 1939; amd. Sec. 1, Ch. 20, L. 1941; amd. Sec. 5, Ch. 207, L. 1945.

References

State ex rel. Handel Oil Co. v. State,
___ M ___, 167 P 2d 844, 846.

81-406. (1805.22) Arbitrators to fix value of improvements—appeal. If the owner of any improvements on state lands desires to sell such improvements to the new lessee and they are unable to agree on the value thereof, such value shall be ascertained and fixed by three (3) arbitrators, one of

which shall be appointed by the owner of the improvements, one by the new lessee and the third by the two (2) arbitrators so appointed. The reasonable compensation that such arbitrators may charge shall be paid in equal shares by the owner of the improvements and the new lessee. The value of such improvements so ascertained and fixed shall be binding on both parties; provided, however, that if either party is dissatisfied with the valuation so fixed, he may within ten (10) days appeal from their decision to the commissioner who shall thereupon cause the chief field agent or assistant field agent to examine such improvements and whose decision shall be final. The commissioner shall charge and collect the actual cost of such re-examination to the owner and the new lessee in such proportion as in his judgment justice may demand. The value of such improvements shall be ascertained and fixed as hereinafter and in this act provided.

History: En. Sec. 22, Ch. 60, L. 1927.

81-407. (1805.23) Who may lease—how much and for what length of time. No persons shall be qualified to lease state lands except one who is the head of a family unless he or she has attained the age of twenty-one (21) years. Any such person and any association, company or corporation authorized to hold lands under lease may lease state lands, and there may be included under one lease, tracts of lands embracing more than one (1) section, whether the lands have been received by the state through federal land grants or consist of so-called "mortgage lands"; any such person, association, company or corporation may hold more than one (1) lease to such lands. No lease to agricultural or grazing lands, or town or city lots shall be for a longer period of time than ten (10) years. If the legislature raises the rentals for state grazing lands during the term of any leases of grazing land hereafter issued which are not issued as a result of competitive bidding the lessee shall, for the years after such increase becomes effective, pay such increased rental and the terms of grazing leases hereafter issued shall so provide.

History: En. Sec. 23, Ch. 60, L. 1927;
amd. Sec. 2, Ch. 42, L. 1933; amd. Sec. 2,
Ch. 65, L. 1939.

81-408. (1805.24) Lease expiration dates. All leases for agricultural lands, grazing lands and town and city lots hereafter issued no matter on what date issued, shall expire on February 28 within ten (10) years from the date on which the lease becomes effective.

History: En. Sec. 24, Ch. 60, L. 1927;
amd. Sec. 3, Ch. 65, L. 1939.

81-409. (1805.25) Determination of rental value. Prior to January 1, 1951, the state board of land commissioners shall establish the rental rate for all state grazing lands upon the animal-unit-month basis as provided in this act, and until February 28, 1952, leases and renewals of leases of state grazing lands in which the lease term is to begin prior to March 1, 1952, or the current term of the lease to be renewed expires prior to said last named date, may be made upon the following conditions as to rate of rental:

For the purpose of determining the per annum rental rate per section of grazing land for any part of the period ending February 28, 1952, they shall be classified as follows:

81-409
(1805.25 RCM
'35)
Amended
SL '49, C. 201
Sec. 1, P. 496
Repealed
SL '49, C. 190
Sec. 5, P. 456

81-409
New matter
L. '51, c. 229
Secs. 1-3
pp. 609-611

Class 1. Extra good grazing land, fifty dollars and forty cents (\$50.40) per section and upwards to such amount as may be fixed by the state board of land commissioners.

Class 2. Good grazing land, well sodded with grass, forty-three dollars and twenty cents (\$43.20).

Class 3. Fair grazing land, with medium grass, thirty-six dollars (\$36.00).

Class 4. Poor grazing land, thinly grassed, twenty-four dollars (\$24.00).

Class 5. Any other grazing land, such amount as may be fixed by said board.

Valuations for purposes of leasing shall be made from plats, records and information on file in the office of the commissioner of state lands and investments, by competent persons, qualified for this work. Beginning February 28, 1948, except in such leases as the rental rate has been fixed by competitive bidding, the annual rental under leases of state grazing lands outstanding July 1, 1947, shall be increased by twenty per cent (20%) thereof; provided, however, there shall be no increase in the annual rental under leases based on classification number four, it being specifically intended there shall be no twenty per cent (20%) increase in the annual rental under leases falling within such classification.

History: En. Sec. 25, Ch. 60, L. 1927; amd. Sec. 3, Ch. 42, L. 1933; amd. Sec. 6, Ch. 207, L. 1945; amd. Sec. 3, Ch. 254, L. 1947.

Classification of the Land

In determining the value of grazing lands of the state the most important factor is the amount of pasturage they will afford; distance from market, while important in determining the value of agricultural land, being of comparatively little importance; hence contention that section 3, chapter 42, laws of 1933 (this act), improperly classifies grazing lands because based only upon the amount of grass produced thereon may not be sustained in the absence of facts showing that the state does not realize the market value of the lands. *Rider v. Cooney et al.*, 94 M 295, 304 et seq., 23 P 2d 261.

Constitutionality

While it is the general rule that the constitutionality of a statute is not to be determined on a question of fact, there are exceptions to the rule, the question whether or not in leasing state lands for grazing purposes the state under the policy adopted by the legislature in enacting section 3, chapter 42, laws of 1933, (this act) classifying such lands and fixing their rental value, realizes their market value, being one of such questions. *Rider v. Cooney et al.*, 94 M 295, 304 et seq., 23 P 2d 261.

References

Leuthold v. Brandjord et al., 100 M 96, 99, 47 P 2d 41 (as sec. 25, ch. 60, laws of 1927).

81-410. Lease rentals for part year. Lease rentals for agricultural or grazing state land, where the lease term begins after February 28 in the initial year of the lease, shall be for the whole of the yearly rate for the fractional part of the initial year if the lease term begins prior to July 1st in such fractional part of year, and for one-half ($\frac{1}{2}$) the yearly rate for such fractional part of the year if the lease term begins after June 30th in the initial year and prior to the succeeding February 28th.

History: En. Sec. 7, Ch. 207, L. 1945.

81-411. No reduction for summer fallow. No credit or reduction or refund in rental shall be allowed any lessee of agricultural or grazing state land on account of summer fallow.

History: En. Sec. 8, Ch. 207, L. 1945.

81-412. (1805.26) Rental, when due—cancellation for nonpayment.

The rental for the first year of the lease and the fee of two dollars and fifty cents (\$2.50) for issuing the lease shall be paid at or before the time of the execution of the lease; provided, however, that in the case of all leases which take effect on and after October 1 and before the expiration of the coming February, both the rental for the fractional year and for the next full year beginning March 1, shall be paid and collected at the time of issuing the lease; provided, further, when the government of the United States is the lessee of state lands for grazing purposes, the rental shall be payable at the end of each year of said lease. The rental for each succeeding year on leases hereafter issued, with the exception of leases wherein the government of the United States is the lessee, shall become due and payable to the commissioner of state lands and investments on December 15 next preceding the rental year to which the rental applies and if not paid on or before February 1 next following, this non-payment shall have the effect of cancelling the lease from and after February 28 of that year. The commissioner shall notify the lessee by letter addressed to the post office address given in the lease of such cancellation, and the land shall then be open for lease to other applicants.

History: En. Sec. 26, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 197, L. 1943.

81-413. (1805.27) Land to be leased in compact bodies. All lands are to be leased in as compact bodies as possible and care shall be taken not to separate parts of any section from the section lines or public highways or from any available water supply, or in such form as to make it more difficult to lease the remaining state lands in the section in which they are located. In case there are applications or bids for renting certain land for grazing purposes and also applications or bids for renting the same land for agricultural purposes, an agricultural lease shall be issued; that bid or application shall be accepted which will bring the largest revenue to the state.

History: En. Sec. 27, Ch. 60, L. 1927.

81-414. (1805.28) Change in terms of lease. Whenever any land is leased for grazing purposes, and the lessee desires to cultivate any part of the land, he shall before doing any such cultivation, make application to the commissioner stating how much land he desires to cultivate, showing the location in the section of such land, send his lease to the commissioner to have the necessary changes made therein, and shall agree that for the remainder of the term of the lease the annual rental shall be at the rate of the full rate for the whole of the leased land for grazing purposes, plus the crop share rental on the basis in this act provided for, the portion of the land designated in the application to be cultivated, whether the lessee continues to cultivate such part or not, it being the intention of this provision to protect the interests of the state and to induce lessees to have the leases originally issued for the usage intended to be made of the land. In case any person shall cultivate lands leased for grazing purposes, without having first secured the right to do so in the manner herein provided, the lease shall be subject to cancellation or the lessee shall be liable for twice the regular agricultural rental on the land so cultivated in addition to the grazing

rental thereof as may be decided by the board. The provisions of this section shall be incorporated in every lease.

History: En. Sec. 28, Ch. 60, L. 1927;
amd. Sec. 9, Ch. 207, L. 1945.

81-415. Conditions of leases—cancellation for violation of rules. It shall be a condition of all leases of agricultural or grazing state lands, (a) that, in the case of agricultural lands, the lessee shall observe the ordinary rules for good management of agricultural lands and shall so handle the leased land with the view of maintaining its productivity and so that wind and soil erosion and noxious weeds are minimized, and that crops are so planted with a view of securing the greatest yields of good quality, and (b) that, in the case of grazing lands, the lessee shall observe the ordinary rules for good range management and shall so manipulate the numbers, class, distribution and season of the range use and the handling, feeding, breeding and marketing of grazing livestock with a view of securing the production of the maximum of livestock and livestock products, consistent with the conservation of the land resources and the perpetuation of its productivity, and to these ends the state land leased shall not be abused by overgrazing.

For the gross violation of any of said rules, the lease involved may be cancelled by the state board of land commissioners upon recommendation of the commissioner, after notice to the lessee and opportunity of full hearing on the question of such gross violation.

History: En. Sec. 10, Ch. 207, L. 1945;
amd. Sec. 4, Ch. 254, L. 1947.

81-416. (1805.29) Form of lease—bond. The general form of lease to state lands shall be prescribed by the state board of land commissioners and no changes in the form for such leases shall be made without the approval of the said board. All leases shall be issued in duplicate, one (1) copy shall be mailed to the lessee, and one (1) copy shall be preserved by the commissioner and entered in a suitable book provided for that purpose. Unless the board decides otherwise, these leases shall be issued without bonds; but the board shall have the right to require a bond and to prescribe the form and conditions thereof whenever it deems it necessary.

History: En. Sec. 29, Ch. 60, L. 1927.

81-417. (1805.30) Share rent. The board may whenever it deems it advisable, and under such regulations as it may prescribe, authorize the leasing of agricultural lands for a share of the crops delivered at the grain elevator or market, which share shall not be less than what is commonly paid by lessees of privately owned lands as share rent in the locality where the state land is situated; and in no case shall such share rental be less than one-fifth (1/5) of the entire crop raised, delivered at the elevator.

History: En. Sec. 30, Ch. 60, L. 1927. NOTE.—In connection with this section see Sec. 81-402.

81-418. (1805.31) Liens on crops and improvements. The state shall have a lien upon all crops growing upon any of its lands, and also upon such crops after they have been separated from the lands for any and all rentals and penalties due or delinquent under the lease on such lands, or becoming due during the calendar year in which such crops are harvested, for any

year or part of year that the land has been held or used by the lessee; such lien shall also apply to all buildings, structures, fences and all other improvements, shall be prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in sections 45-701 and 45-801, which shall have priority as specified in section 52-301, and is hereby expressly reserved. Any person purchasing or otherwise acquiring any of such crops or improvements takes the same subject to such lien. Any agent or representative of the department, or the sheriff of the county in which the land is located, or his deputy, may demand of the lessee, or his agent, payment of the amounts due the state, and if the same are not paid upon such demand, the officer, making such demand, or any person or representative of the department, may seize, sell and dispose of, either at private or public sale, upon giving notice for not less than three (3) days of such sale, sufficient of the said crops or improvements, or of both, to pay the amounts due the state together with costs and expenses of seizure and sale. These provisions relating to liens on crops and improvements shall be embodied in all leases for agricultural and grazing lands and for town, city or other lots.

History: En. Sec. 31, Ch. 60, L. 1927.

81-419. (1805.32) Assignment of leases—preferences—fee. Leases to state lands may be assigned on blanks provided for that purpose by the state board of land commissioners, but no such assignment shall be binding on the state unless the assignment is filed with the commissioner, approved by him and payment made of the assignment fee of one dollar (\$1.00). Preference shall always be given to the applicant who wants the land for his own individual use so that the full advantage coming from the leasing and use of such lands may reach those who actually till the soil, and so that they shall not be compelled to pay a higher rental than that due the state. If a lessee subleases state lands on terms less advantageous to the sublessee than the terms given by the state, his lease shall be subject to cancellation by the state board of land commissioners after hearing, duly held on the facts involved. In any case where state land is subleased by any lessee of state lands, such sublease shall be illegal unless a copy of the sublease has been filed with the state land office and approved by the commissioner.

History: En. Sec. 32, Ch. 60, L. 1927; amd. Sec. 1, Ch. 14, L. 1937; amd. Sec. 12, Ch. 207, L. 1945.

Not Applicable to Share Croppers

Where defendant, in an action to recover one-fourth of a crop of wheat raised on state lands under lease to plaintiff, was in effect a share cropper and

not a sublessee, this section under which the state board of land commissioners may cancel a lease if the lessee subleases to another on terms less advantageous to the sublessee than the terms given by the board to the lessee, has no application to a cropper. *Schneider v. Nelson*, 111 M 377, 382, 110 P 2d 972.

81-420. (1805.33) Acquisition of water right by lessee. The lessee of state lands may at any time prior to one (1) year before the expiration of his lease make application to the board for permission to secure a water right to the land under his lease. Such application shall be in writing, shall show how much of the land can be irrigated, the permanency of the water supply and the probable cost of placing the land under irrigation. If the proposed plan meets with the approval of the board, permission shall be granted the lessee to secure the desired water right for the land and to

place the same under irrigation. If such water right becomes a permanent and valuable improvement, then in case of the sale or lease of the lands to other parties, the former lessee shall be entitled to receive compensation in the amount of the reasonable value thereof, as in the case of other improvements, from the new lessee or the purchaser. These provisions shall not be so construed as to make the state liable to the lessee for the payment of the cost or value of such irrigation improvements.

History: En. Sec. 33, Ch. 60, L. 1927.

81-421. (1805.34) Compensation for improvements. A lessee of state lands shall have the right to place a reasonable amount of improvements upon the lands leased by him, which improvements may consist of fences, cultivation and improvement of the land itself, irrigation ditches, houses, sheds, wells and reservoirs, and similar improvements. Whenever another person becomes the lessee of such lands, he shall pay to the former lessee the reasonable value of such improvements at the time the new lessee takes possession thereof. Provided, however, that if any of the improvements consists of breaking (meaning the original plowing of the land), and one (1) years crops have been raised on the land after the breaking thereof, the compensation for such breaking shall not exceed the sum of two dollars and fifty cents (\$2.50) per acre, and that in case two (2) or more crops have been raised on the land after the breaking thereof, then in such case the breaking shall not be considered as an improvement to the land. In case the former lessee and the new lessee are unable to agree on the reasonable value of such improvements, then such value shall be ascertained and fixed as provided in this act.

In determining the value of these improvements consideration shall be given not only to the original cost but also to the present condition thereof and to their suitableness for the uses ordinarily made of the lands on which they are located, and also to the general state of cultivation of the land, its productive capacity as effected by former use and also to its condition with reference to noxious weeds whether it is infested with such weeds or free from these pests. Consideration shall be given to all actual improvements and to all known effects that the use and occupancy of the land have had upon its productive capacity and desirableness for the new lessee. The former lessee may, however, remove or dispose of the movable improvements on the land to other parties than the lessee; but if he fails to remove such improvements from the land within sixty (60) days from the date of the expiration of his lease, then all of such improvements shall become the property of the state unless the commissioner for good cause shown shall grant additional time for the removal thereof.

Before a lease is issued to the new lessee he shall show that he has paid the former lessee the value of the improvements as agreed upon by them or as fixed and determined under the provisions of section 81-406 or that he has offered to pay the value of such improvements as so fixed and determined or that the former lessee elects to remove the improvements.

History: En. Sec. 34, Ch. 60, L. 1927.

81-422. (1805.36) Cancellation of leases. The board shall have the power and authority in its discretion to cancel a lease for any of the following causes: For fraud or misrepresentation, or for concealment of facts

relating to its issue, which if known would have prevented its issue in the form or to the party issued; for using the land for other purposes than those authorized by the lease, and for any other cause which in the judgment of the board makes the cancellation of the lease necessary in order to do justice to all parties concerned and to protect the interests of the state. Such cancellation shall not entitle the lessee to any refundment of rentals paid or exemption from the payment of any rentals, penalties or other compensation due the state.

History: En. Sec. 36, Ch. 60, L. 1927.

81-423. (1805.37) Leasing regulations. The state board of land commissioners shall have the power, and it is hereby made its duty, to formulate and prescribe such additional rules and regulations relating to the leasing of state lands, not inconsistent with the provisions of this act, as it may from time to time deem necessary in order that the use and proceeds of these lands may contribute in the highest attainable measure to the purposes for which they have been granted to the state of Montana.

History: En. Sec. 37, Ch. 60, L. 1927.

81-424. Lease of state-owned land to United States for military purposes authorized. Notwithstanding any inconsistent provision of law, general, special or local, the state board of land commissioners of the state of Montana, whenever it deems it to be in the public interest, may lease to the United States of America, for military purposes, any land owned by the state of Montana, whether such land was received by the state through federal land grants, or whether such land consists of so called "mortgage lands", on such terms and conditions as it may deem necessary to promote the public welfare and protect the interests of the state; provided, however, that rental shall be payable at the end of each year of said lease.

History: En. Sec. 1, Ch. 122, L. 1943.

81-425. Pledge or mortgage of leasehold interest in state lands. Any lessee of a grazing or agricultural lease of state lands is hereby authorized to pledge said lease or mortgage his leasehold interest in said lands.

History: En. Sec. 1, Ch. 52, L. 1947.

81-426. Filing with state required—fee. The pledgee of such lease or the mortgagee of such leasehold interest shall, within thirty (30) days after receipt of said pledge agreement or mortgage, file the same, or a certified copy thereof, in the office of the state board of land commissioners, and shall pay to said board a fee of one dollar (\$1.00) for the filing thereof.

History: En. Sec. 2, Ch. 52, L. 1947.

81-427. Transfer of lease, when. Upon due proof of the acquisition of such lease or leasehold interest by any person under or pursuant to such pledge agreement or mortgage, the state board of land commissioners shall transfer said lease to said person, who shall thereupon be subject to all the conditions, obligations and liabilities and entitled to all the rights and privileges provided for in said lease.

History: En. Sec. 3, Ch. 52, L. 1947.

81-428. Proof of termination of lease or pledge to be filed—fee. The lessee of any grazing or agricultural lease of or leasehold interest in state

lands which has been pledged or mortgaged as herein provided shall, within thirty (30) days after payment of the indebtedness secured thereby, or within thirty (30) days after the pledge agreement has been terminated or the leasehold interest has been released from the mortgage, file with the state board of land commissioners due proof of said fact and pay to said board a fee of one dollar (\$1.00) for said filing.

History: En. Sec. 4, Ch. 52, L. 1947.

81-429. Application of act. The provisions of this act shall apply to all pledges of grazing and agricultural leases of state lands and mortgages of leasehold interests in said lands which are now in existence.

History: En. Sec. 5, Ch. 52, L. 1947.

81-430. Effect of partial unconstitutionality. If any section, clause, paragraph or provision of this act shall be found invalid by court of competent jurisdiction, it shall be conclusively presumed that this act would have been passed by the legislature without such invalid section, paragraph or clause and the act as a whole shall not be declared invalid by reason of the fact that one or more sections, clauses, sentences, paragraphs or parts may have been found invalid by any court.

History: En. Sec. 6, Ch. 52, L. 1947.

81-431. Repealing clause and exception. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that section 81-908, is hereby declared not to be in conflict with this act.

History: En. Sec. 7, Ch. 52, L. 1947.

CHAPTER 5

COAL MINING LEASES AND PERMITS

- Section 81-501. Coal mining leases.
 81-502. Not more than one section may be leased to one person—term—fee.
 81-503. Royalty.
 81-504. Application—deposit.
 81-505. Bond.
 81-506. Improvements of former lessee.
 81-507. Board may prescribe additional rules and regulations.
 81-508. Report and payment of royalty.
 81-509. Coal mining permits for private use and for schools.
 81-510. Disposition of royalties and other receipts.

81-501. (1805.38) Coal mining leases. The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may deem for the best interests of the state any state lands to which the title has vested in the state and in which the coal or coal rights are not reserved by the United States for exploring for, mining, removing, selling and disposing of the coal therein upon the terms and conditions herein stated, and subject to such rules and regulations as the board may prescribe. This power and authority to lease state lands for coal mining purposes shall extend to and include all lands owned by the state no matter in what manner acquired and shall also extend to and include all those state lands which have been sold but in which the coal rights have been reserved by the state of Montana, whether such lands are under certificate of purchase or patents have been issued; but in such cases and in all cases where the lands are under

lease for grazing, agriculture or similar purposes, care shall be taken in issuing the coal mining lease to protect the rights of the purchaser or lessee.

All such coal leases shall be subject to the condition that the coal must be mined, handled and marketed in such manner as to prevent as far as possible all waste of coal and shall also be subject to the condition that the mining operations shall be carried on in such systematic and orderly manner as not to make subsequent mining operations more difficult or expensive. Violations of these conditions shall constitute grounds for the forfeiture of the lease, after hearing had thereon before the state board of land commissioners.

History: En. Sec. 38, Ch. 60, L. 1927.

40 C.J. Mines and Minerals § 409 et seq.
36 Am. Jur. 296, Mines and Minerals,

Mines and Minerals 5.

§§ 21, 22.

81-502. (1805.39) Not more than one section may be leased to one person—term—fee. No person, co-partnership, company or corporation shall be entitled to lease more than one (1) section of land for coal mining purposes, and no lease shall be issued for a longer term than five (5) years, but the board may establish such rules and regulations for the renewal of a lease at the expiration of the term as it may deem proper and necessary. The board shall prescribe the form of the lease; the fee for issuing the lease and approving the bond hereinafter provided shall be two dollars and fifty cents (\$2.50) payable to the commissioner.

History: En. Sec. 39, Ch. 60, L. 1927.

81-503. (1805.40) Royalty. The compensation of the state under all coal mining leases shall be upon a royalty basis and shall be fixed and determined by the board. The amount of such royalty shall be based upon the kind, grade and character of the coal in each particular mine, upon the size, shape and nature of the coal vein, strata or body, and upon the shipping and marketing facilities for the product. Consideration shall also be given to every other known factor effecting the value of each particular coal mining lease; but in no case shall the royalty for the coal mined be less than twelve and one-half (12½) cents per ton of two thousand (2,000) pounds.

History: En. Sec. 40, Ch. 60, L. 1927.

81-504. (1805.41) Application—deposit. The application for a coal mining lease shall be in writing, shall state the quantity of coal that it is proposed to mine under such lease during the first year thereof and during each subsequent year as nearly as the applicant can estimate such quantity and shall contain such further information as the board may require. If the board grants the application, it shall fix the royalty per ton and shall demand from the applicant a deposit of not less than the amount of the royalty on the estimated average production for one (1) month of the lease and it may at its discretion ask for such larger deposit as it may under the circumstances deem necessary in order to protect the interests of the state; but this deposit shall in no case be less than fifty dollars (\$50.00).

This deposit shall be credited to the lease and held intact to the end of the first year. If all the royalties for such year have been paid and are equal to or exceed such deposit then the deposit shall be held intact for the credit of the lessee for the subsequent year or years; but if the royalties accrued and paid during the first year or any subsequent year amount to less than the amount of such deposit, then the difference between the amount of the royalties paid and the deposit shall be deducted therefrom and charged as rent or royalty for the lease for that year so that the annual rental will never be less than the amount of the cash deposit determined upon by the board and in no case less than fifty dollars (\$50.00) per annum. At the beginning of the second year or any subsequent year of the lease, the lessee shall make such additional deposit as will bring the unused portion of his deposit up to the original amount as fixed by the board.

History: En. Sec. 41, Ch. 60, L. 1927.

81-505. (1805.42) Bond. The board shall also demand a surety company bond in such form and amount as it may determine conditioned for the payment of all royalties due the state and for the carrying on of the mining operations according to the terms of the lease; but a lessee may in lieu of furnishing a surety company bond increase the cash deposit hereinbefore provided for to such an amount as will in the judgment of the board make the furnishing of a bond unnecessary.

History: En. Sec. 42, Ch. 60, L. 1927.

81-506. (1805.43) Improvements of former lessee. Whenever a coal mining lease is applied for on land where mining operations have been carried on by a former lessee and there are surface or underground improvements on the land used at such former operations, disposition shall be made of such improvements satisfactory to the board before a new lease is issued. If the owner of such improvement desires to sell the same to the new lessee, then the new lessee shall pay him the reasonable value thereof as far as they are suitable for the new mining operations. If they fail to agree, on the value of such improvements, then such value shall be ascertained and fixed as provided in section 81-406.

Before a new lease is issued, the applicant shall show to the satisfaction of the board that he has paid the owner for the improvements as agreed on between them, or as fixed by the aforesaid officers, or officer, or that he has tendered payment as so fixed, or that the owner desires to remove his improvements.

History: En. Sec. 43, Ch. 60, L. 1927.

81-507. (1805.44) Board may prescribe additional rules and regulations. The board shall have the power and authority to prescribe such additional rules and regulations and to do and perform all acts and things not inconsistent with the enabling act, the constitution and the statutes of this state as it may deem necessary and proper relating to the leasing of state land for coal mining purposes.

History: En. Sec. 44, Ch. 60, L. 1927.

81-508. (1805.45) Report and payment of royalty. On or before the 15th day of each calendar month the lessee shall make a report to the

commissioner in such form as may be prescribed by him, showing the number of tons mined during the preceding calendar month, the price obtained therefor at the mine, the total amount of all sales and containing such additional information as may be required by the commissioner, which report shall be verified by the oath of the lessee and be accompanied by payment of the royalty due the state for such preceding month as shown by the report.

History: En. Sec. 45, Ch. 60, L. 1927.

81-509. (1805.46) Coal mining permits for private use and for schools.

The board may in its discretion grant to any resident of this state a permit for a term of not more than one (1) year to mine coal for the use of himself and his family from any coal deposit belonging to the state of Montana and not under lease upon payment to the state of the flat sum of five dollars (\$5.00) as a royalty for any amount of coal mined by him not exceeding thirty (30) tons of two thousand (2,000) pounds.

The board may also grant a similar one (1) year permit to the board of trustees of any school district in this state, provided that if such school district requires more than thirty (30) tons of coal per annum then any additional amount required shall be paid for in advance at the rate of twelve and one-half (12½) cents per ton. Applications for such permits shall be accompanied by an affidavit to the effect that the coal is not wanted for sale or disposal to other parties but that it is wanted for the use of the applicant and his family or for the use of the school district as the case may be.

The granting of such permits shall not prevent the board from issuing the usual coal mining leases on the land from which the coal under such permit is to be taken. In cases of this kind the permittee shall remove the quantity of coal to which he is entitled as expeditiously as possible and his rights under the permit shall then automatically cease upon the issue of the lease.

History: En. Sec. 46, Ch. 60, L. 1927.

81-510. (1805.47) Disposition of royalties and other receipts. All fees, royalties, bonuses and penalties collected under coal mining leases shall be credited by the commissioner to the same funds that such receipts under oil and gas leases on such lands would be credited under the provisions of this act; and in the case of coal mining leases, rentals, and bonuses, if any shall be considered as royalties.

History: En. Sec. 47, Ch. 60, L. 1927.

CHAPTER 6

PROSPECTING PERMITS AND MINING LEASES

Section	81-601.	Definitions.
	81-602.	Empowering state board of land commissioners to lease, etc.
	81-603.	Provisions of leases.
	81-604.	Royalties—pooling agreements and unit plans of operation.
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- 81-610. Coal, oil and gas not affected, when.
- 81-611. Examination of lands.
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- 81-618. Repealing provisions—exceptions.
- 81-619. Leases by state board of land commissioners to holders of prospecting permits of nonmetallic minerals—minimum royalty.
- 81-620. Leases not assignable.

81-601. Definitions. a. The term “metalliferous minerals”, as used in this act, means gold, silver, lead, zinc, copper, platinum, iron and all other metallic minerals.

b. The term “gems”, as used in this act, means sapphires, rubies and other stones commonly known as “precious stones” or “semi-precious stones”, but does not include any stone or other earth material commonly used in building or construction work.

c. The term “mining”, as used in this act, means the carrying on of operations of any kind for the purpose of extracting from the earth ore and other earth material containing metalliferous minerals and/or gems, and includes operations of any kind for the extraction from ores and other earth material of metalliferous minerals and/or gems.

d. The term “mining lease”, as used in this act, means a lease issued by the state board of land commissioners for the prospecting for and/or mining of metalliferous minerals and/or gems. The term “mining lessee”, as used in this act, means the holder of a mining lease as herein defined, whether such holder is the original lessee under such lease, or holds such lease as successor of such original lessee.

e. The term “returns”, as used in this act, means the net amount received by the shipper from products of mining operations, after deducting transportation costs and smelting charges and deductions, and other treatment costs, not including as a deduction any cost of producing or treating at the mine.

f. The term “full market value”, as used in this act, means the highest net value of products of mining operations in United States markets, less cost of transportation and refining, not including as a deduction any cost of producing or treating at the mine.

History: En. Sec. 1, Ch. 148, L. 1937.

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40 C.J. Mines and Minerals § 409 et seq.

81-602. Empowering state board of land commissioners to lease, etc. The state board of land commissioners is hereby empowered, in its discretion, subject to the other provisions of this act, to lease state owned lands, including the beds of navigable streams and the beds of navigable bodies of water, and the reserved mineral rights of the state in lands heretofore or hereafter sold or leased by the state, to persons, associations of persons, or corporations, for the purpose of prospecting for and/or mining metalliferous minerals and/or gems. Such leases may be for such periods of time as may be determined by said board, subject to such limitations as may be contained

in the grants by which the state has heretofore acquired or may hereafter acquire title to lands or mineral rights so leased.

History: En. Sec. 2, Ch. 148, L. 1937.

81-603. Provisions of leases. Leases issued by said board under the authority of this act shall give the lessee, so long as he shall comply with the terms and conditions thereof, the exclusive right of possession of the lands or mineral rights leased thereby, subject to such reservations as may be contained in such leases, and may contain reasonable provisions for preliminary prospecting periods, and shall contain reasonable requirements for the prosecution of work during the prospecting period (if any), and for the prosecution of the work of mining after the prospecting period, and may provide for the payment of rentals in conjunction with such work requirements, or may prescribe cash rentals as an alternative, or otherwise, as the board may deem best, shall specify the term of the lease, the royalty to be paid, reasonable forfeiture provisions and reasonable terms under which the lessee may, within a time limited in such lease, remove property placed upon the leased lands by him, in the event of the termination of the lease by forfeiture or by lapse of time, and may contain such other provisions as said board and the lessee may agree upon, not inconsistent with the provisions of this act, and in short said board shall have the power in making such leases to exercise business discretion, so long as the provisions of this act shall not be violated. No mining lessee shall, during any preliminary prospecting period contained in any such lease, remove any metalliferous minerals or gems from the leased premises, except such as may be necessary for the proper testing and sampling of such lands or mineral rights, and except as may be permitted by said board. The board, by agreement with the permittee or lessee, may, in its discretion and upon such terms as it may deem best, amend or modify the terms and conditions within the limitations of this act and/or extend from time to time the term of any lease or prospecting permit issued under the provisions of this act, subject to the limitations contained in section 81-602.

History: En. Sec. 3, Ch. 148, L. 1937;
amd. Sec. 1, Ch. 205, L. 1947.

81-604. Royalties—pooling agreements and unit plans of operation. In every such lease the board shall reserve to the state of Montana a royalty which shall, together with other considerations to be paid by the mining lessee, constitute the full market value of the leasehold interest conveyed by such lease, as such full market value shall be ascertained by the board in accordance with the provisions of this act; which royalty shall be not less than five per cent (5%) of the returns from, or of the full market value of, the metalliferous minerals and/or gems recovered by the lessee from the state lands or reserved mineral rights covered by such lease.

The state board of land commissioners may enter into agreements for the pooling of acreage or yardage with others holding the mineral rights in adjoining lands for unit operation of placer mining and the apportionment of royalties on a cubic yardage or area basis in the case of placer mining deposits lying partly on land in which the state holds the mining rights and partly on land the mining rights in which are held by others;

provided, that from each cleanup of values under such unit operations in which any yardage or area mined on lands to which the state holds the mineral rights is included, the state shall be entitled to royalties computed on that proportion of the whole value of recoveries from the cleanup as the yardage or area mined from lands included in the agreement in which the state holds the mining rights, bears to the total yardage or area mined and included in the cleanup; provided further that the state board of land commissioners shall have power to enter into agreements for such unit operation of such placer mining deposits and the apportionment of royalties upon such other equitable basis as shall to them seem in the best interest of the state; and provided further that such agreements shall not change the percentage of royalties to be paid to the state under the unit operations from the percentage fixed in the lease, or to a less percentage than the minimum provided by law.

History: En. Sec. 4, Ch. 148, L. 1937;
amd. Sec. 2, Ch. 205, L. 1947.

81-605. Quantity of lands. Any such lease shall cover such quantity of ground as the board, shall, in its judgment, determine to be reasonable and consistent with the character of the ground, the type of deposit or deposits for which said lands is to be mined, and the character and size of the operation contemplated or necessary or reasonable in good mining practice, for the profitable recovery of such metalliferous minerals and/or gems therefrom.

History: En. Sec. 5, Ch. 148, L. 1937.

81-606. Form of applications. Forms of applications for leases under the provisions of this act shall be prepared by the state board of land commissioners, and each applicant for a mining lease shall execute an application in such form. At the time of the issuance of any mining lease, the mining lessee shall pay to the board a fee of not more than one hundred dollars (\$100.00), the amount thereof to be fixed by said board and to be based upon the office work of said board involved in the preparation and issuance of such lease, but the decision of the board as to the amount thereof within said limit shall be final.

History: En. Sec. 6, Ch. 148, L. 1937.

81-607. Bonds to state. The board may also at the time of the execution and delivery of any such mining lease, or at any time during the life thereof, require any mining lessee to file with said board, for the benefit of the state of Montana, a bond or bonds conditioned to protect the rights of the state of Montana, particularly in the payment to the proper officer of said state of the royalties reserved in such mining lease, such bond or bonds to be in such form as may be prescribed by said board, and the sufficiency thereof to be subject to the approval of the board. The board may at any time require new or additional bonds if, in its discretion, the interests of the state are not adequately protected by the bond or bonds theretofore filed with it in connection with any such mining lease.

History: En. Sec. 7, Ch. 148, L. 1937.

81-608. Bonds to protect lessees, contractees, etc. In the case of lands which shall, at the time of the issuance of a mining lease have been sold,

or be under contract of sale, or leased for agricultural, grazing, or other purposes, the board shall provide against the infringement of the rights of such prior purchaser, contractee, or lessee, and among other things may at any time require the mining lessee to file with said board a corporate surety bond in such reasonable amount as may be fixed by the board, conditioned to protect the rights of such prior purchaser, contractee or lessee, the form of such bond to be prescribed by said board, which bond shall run to the state of Montana for the benefit of such prior purchaser, contractee, or lessee, for whose benefit the same is filed with said board. New or additional bonds may be required by the board at any time. Suit may be brought upon such bond by any such prior purchaser, contractee or lessee, for alleged violation of the terms thereof by such mining lessee, and any such suit shall be brought by such claimant in the name of the state of Montana for the use and benefit of such claimant, and any recovery upon such bond shall be for the benefit of and shall be paid to the claimant in whose suit such recovery is made.

History: En. Sec. 8, Ch. 148, L. 1937.

81-609. Sales, etc., subject to mining leases. Any sale of state lands, any contract for the sale of state lands and any lease of state lands, made or issued by said board during the life of any mining lease issued under the provisions of this act shall be subject to such mining lease during the life thereof, and no bond shall be required of such mining lessee for the protection of any such purchaser, contractee or other lessee, unless provision therefor shall be made in such mining lease.

History: En. Sec. 9, Ch. 148, L. 1937.

81-610. Coal, oil and gas not affected, when. In the case of lands covered by a lease for the mining of coal, oil or gas, no lease for the mining upon any such land for metalliferous minerals and/or gems shall be issued to any person, association of persons, or corporation, other than the holder of such coal, oil or gas lease while such coal, oil or gas lease is in force, except with the written consent of the holder of such coal, oil or gas lease.

History: En. Sec. 10, Ch. 148, L. 1937.

81-611. Examination of lands. Before leasing any lands for the mining of metalliferous metals and/or gems, the board shall investigate the character of such lands and the nature and possible extent of the mineral deposits therein, for the purpose of determining whether such lands are of such a character as to warrant the issuance of a mining lease thereon, and for the purpose of determining the amount of royalty and other rentals or considerations for which such lands should be leased for mining purposes under the provisions of this act. Upon the filing of an application for a mining lease the board may, if the lands covered by such application shall not have theretofore been examined by the board as above provided, require the applicant for such mining lease to deposit with the board an amount of money, not exceeding five hundred dollars (\$500.00) in any one case, which, in its judgment, will cover the cost of a special examination, to enable the board to pass upon such application in accordance with the provisions of this act. Such deposit shall be used to reimburse the state of

Montana for the actual cost of such examination, and any portion of such deposit not required for such reimbursement shall, upon the approval or rejection of such application, be by the board repaid to the applicant depositing the same. The board shall make and preserve complete records of all such examinations.

History: En. Sec. 11, Ch. 148, L. 1937.

81-612. Failure of title. In issuing mining leases, as in this act authorized, the said board and the state of Montana shall be deemed to have leased only such right, title and interest as the state may have in the lands and/or metalliferous minerals and/or gems therein contained, covered by such lease, and neither the state of Montana, nor said board, nor any representative, agent or employee of the state of Montana, or of said board shall be under any liability in the event of the failure of the title of the state of Montana, in whole or in part, to the lands and/or metalliferous minerals and/or gems covered by such lease.

History: En. Sec. 12, Ch. 148, L. 1937.

81-613. Assignment of leases or permits. In case of the assignment of a mining lease or a prospecting permit by the holder thereof, the mining lessee or permittee executing such assignment shall not be relieved of any responsibility for operations under such lease or prospecting permit until the financial and moral responsibility of the assignee shall have been passed upon and approved by the board, nor until there shall be deposited with the board:

(a) Such assignment or an executed copy thereof;

(b) An instrument executed by the sureties upon any and all bonds then held by said board in connection with such mining lease or permit and then in force, consenting to such assignment and containing the agreement of such sureties to be bound by such bonds under such assignment, or new bonds conforming to all the requirements of section 81-607; and

(c) A fee of two and 50/100 dollars (\$2.50).

History: En. Sec. 13, Ch. 148, L. 1937.

81-614. Determining title to stream beds, etc. The state board of land commissioners is hereby empowered to take all proper proceedings for the purpose of determining the title to the beds of lakes and other bodies of water and of streams within the state of Montana, and to that end to bring or defend suits or other proceedings in court, or before other proper tribunals.

History: En. Sec. 14, Ch. 148, L. 1937.

45 C.J. Navigable Waters § 212 et seq.;
67 C.J. Waters § 222 et seq.

Navigable Waters 36(1); Waters 89.

81-615. Prospecting permits. All prospecting permits and all leases outstanding and in good standing at the time of the passage of this act may continue in force until their expiration by their terms, and the rights of the respective permittees or lessees shall be governed by the laws in force when such permits were respectively issued. Prospecting permits without lease may be hereafter issued by the board upon the payment of a fee of one dollar (\$1.00) at the time of the issuance of such permit and a like fee of one dollar (\$1.00) at the end of each year during the life thereof,

and any such permit shall provide for due diligence in the work of prospecting during the life of such permit. Any such permit shall be limited to prospecting for metalliferous minerals and/or gems and no such permittee shall have the right to remove from any lands or mineral rights covered by such permit any metalliferous minerals or gems except such as may be necessary for the proper testing and sampling of such lands or mineral rights, and except as may be permitted by said board. During the life of any permit in force at the time of the passage of this act, or issued under the provisions of this section, the permittee may apply for a lease of the lands or mineral rights covered by such permit, and if a lease is granted the same shall be in the form and subject to all the terms and conditions specified in this act, as in the case of a mining lease issued under this act. Such permittee shall have the preference right to a lease, upon such terms as the board shall deem just, subject to the terms of this act, and in any event said permittee shall have preference without competitive bidding, and upon the most favorable terms permitted under this act, to forty (40) contiguous acres. If some other person shall make a better bid for a mining lease upon the land covered by such permit, and if the board shall award a mining lease to such better bidder, the board shall also require such mining lessee to pay to the permittee, prior to the issuance of such lease, the full value of all the work the permittee shall have performed upon the land under his permit in connection with his prospecting and exploration work, and the permittee shall have the right to remove from such land, within thirty (30) days from the date the board shall give such permittee notice of the issuance of such mining lease, or within such further time as the board, upon good cause shown, may allow, any machinery, equipment, improvements, and other property placed thereon by him.

History: En. Sec. 15, Ch. 148, L. 1937.

81-616. Notice to lessees. Upon the granting of an application for a prospecting permit or a mining lease under the provisions of this act, the commissioner of state lands and investments shall promptly give written notice, by ordinary mail, to the person, association of persons, or corporation to whom such permit or lease shall be so issued, and to the holder of an agricultural or grazing lease embracing the same land, if there be such lessee, or to the holder of a certificate of purchase or patent embracing the same land, if there be such purchaser or patentee. The said notice shall be addressed to such permittee, mining lessee, agricultural or grazing lessee, purchaser or patentee at his last known post office address.

History: En. Sec. 16, Ch. 148, L. 1937.

81-617. Disposition of royalties, fees and penalties. All fees and penalties collected under this act shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the land belongs; and all moneys collected as royalties shall be credited to the permanent fund arising from the grant to which the land belongs under each particular permit or lease; provided, however, that all rentals and royalties received from "mortgage lands" shall be credited to the same fund or funds as other receipts from such lands; and that all rentals

and royalties received under or in connection with a lease or permit on other lands or minerals rights, not acquired through any grant to the state of Montana from the United States, shall be paid into the same funds into which such receipts are paid when the land is part of the grant for the benefit of the public schools of the state of Montana.

History: En. Sec. 17, Ch. 148, L. 1937. 40 C.J. Mines and Minerals § 409 et seq.; 59 C.J. States § 378.

Mines and Minerals—5, 6; States—126, 127.

81-618. Repealing provisions—exceptions. Sections 1805.48, 1805.49, 1805.50 and 1805.51, of the Revised Codes of Montana of 1935, are hereby repealed, except that all permits and leases issued under said sections and in good standing at the time of the passage and approval of this act, shall continue in force until they shall expire by their terms, and said sections shall continue in force only to the extent necessary to protect the rights of the permittees and lessees under such permits and leases.

History: En. Sec. 18, Ch. 148, L. 1937.

81-619. Leases by state board of land commissioners to holders of prospecting permits of nonmetallic minerals—minimum royalty. Whenever the state board of land commissioners has heretofore issued a prospecting permit for the purpose of prospecting for any of the nonmetallic minerals such as phosphate, sodium, potash, sulphur, oil shale or other non-metallic mineral products not including coal, oil or gas, in the belief, on the part of said board, that the same was authorized by sections 81-601 to 81-618, or any other law of the state of Montana, the holder or holders of such permit, providing the same is, by the terms thereof, in good standing at the time of the enactment of this act, shall be entitled to a lease under the terms and provisions of sections 81-601 to 81-618 as fully as if said acts permitted the issuance of leases upon said nonmetallic mineral deposits aforesaid, such lease to embrace the lands described in any such permit, provided, however, that said lease may be issued to the holder or holders of any such permit at a minimum royalty rate of two percent (2%) of the gross value of the output of such minerals at the mine.

History: En. Sec. 1, Ch. 205, L. 1945.

81-620. Leases not assignable. No lease issued hereunder may be assigned without the consent of said board first had and obtained.

History: En. Sec. 2, Ch. 205, L. 1945.

CHAPTER 7

LEASES AND PERMITS FOR DEPOSITS OF STONE, GRAVEL, SAND AND OTHER MINERALS

- Section 81-701. The board may issue leases.
 81-702. Report of lessee and payment of distribution of royalties and other receipts.
 81-703. Land may be leased for other purposes.
 81-704. Stone, gravel and sand permits for public use.

81-701. (1805.52) The board may issue leases. Whenever there are found upon state lands to which the title is vested in the state, and which

lands have not been sold by the state under certificate of purchase, or otherwise, deposits of stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand valuable for building, mining or other commercial purposes, the state board of land commissioners may, in its discretion, issue to private persons permits or leases for the removal and disposition of such stone, limestone, oil shale, clay, bentonite, calsite, talc, mica, ceramic, asbestos, marble, diatomite, gravel or sand upon such terms and conditions as the board may determine; provided, however, that all such leases shall be upon a royalty basis calculated upon a gross value by weight or cubic measurement as is most favorable for the particular substance being mined or extracted from the lands, such gross value to be determined at the mine or site of operation, and the rates shall be the same that ordinarily would be charged by private owners under similar circumstances, or as in the determination of the board may be determined fair and reasonable, and the fee for issuing the lease shall be the same as for an oil and gas lease. No such lease shall be made for longer term than ten (10) years, and the board may demand a cash deposit to guarantee the payment of the royalties, or demand a surety bond, or both such cash deposit and bond, as the board may determine.

History: En. Sec. 52, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 194, L. 1945.

Mines and Minerals 5.
40 C.J. Mines and Minerals § 409 et seq.

81-702. (1805.53) Report of lessee and payment of distribution of royalties and other receipts. On or before the 15th day of each month, each holder of a lease under the provisions of this act, shall make a report to the state board of land commissioners' office, which report shall be in such form as the state board of land commissioners may prescribe, showing the amount of substances as herein provided, mined or extracted from the lands under the provisions of this act in the preceding month, the price obtained, the total amount of sales and such additional information as may be required, and shall be verified by affidavit of the lessee, or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount to the state as royalty for the month covered by the report. The royalties, fees and penalties received under such leases shall be credited to the various funds to which they properly belong in the same manner as is now provided for crediting the same under oil and gas leases.

History: En. Sec. 53, Ch. 60, L. 1927;
amd. Sec. 2, Ch. 194, L. 1945.

81-703. (1805.54) Land may be leased for other purposes. Such portions of the section or other subdivision of the land on which such deposits are located as are not needed for the quarrying or digging and removal of the stone, limestone, oil shale, clay, sand or gravel may be leased for grazing or agricultural purposes the same as other state lands, and in the case that grazing or agricultural leases are issued they shall provide for a right of way across the land for the removal of the stone, limestone, oil shale, clay, gravel, sand or other deposits, but the rights of the lessee shall also be duly protected.

History: En. Sec. 54, Ch. 60, L. 1927.

81-704. (1805.55) Stone, gravel and sand permits for public use. The state board of land commissioners is hereby authorized and empowered in its discretion to issue permits upon such terms and conditions as it may determine, not inconsistent with any constitutional or statutory provision relating to state lands to the state highway commission, to the board of county commissioners of the several counties of the state and to the governing boards or bodies of cities or towns and of other political subdivisions of the state granting them the right to take, remove and use stone, gravel or sand from any state lands that have not been sold under certificate of purchase or otherwise for the construction, maintenance and improvement of public roads, highways, bridges, streets or alleys. The rights of lessees to the lands on which such stone, gravel or sand may be located shall be properly safeguarded under the terms of the permits.

History: En. Sec. 55, Ch. 60, L. 1927.

CHAPTER 8

GRANTING OF EASEMENTS FOR PUBLIC PURPOSES

Section 81-801. Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by state water conservation board.

81-802. Easements for school sites and grounds and other public uses.

81-803. Easements on state land—application for—action on.

81-804. Public uses for which easement granted.

81-805. Notice to lessee—settlement.

81-801. (1805.56) Sale of state lands to United States—easements for public purposes granted—mineral reservations—land for projects administered by state water conservation board. (1) Any land now or hereafter owned by the state of Montana and needed by the United States in the construction of projects for the control of floods, river regulation, conservation of water, irrigation and reclamation works or transmission or distribution of electric energy, shall, upon application to the state board of land commissioners, be sold and conveyed to the United States at the price per acre fixed by the board of appraisers appointed by the United States to appraise and value lands to be included within such projects and needed by the United States in the construction thereof; subject, however, to the approval of the state board of land commissioners, and the price limitations of the enabling act and the state constitution.

(2) There is hereby granted to the United States over all the lands now owned or hereafter acquired by the state of Montana, an easement of sufficient width for the purpose desired for right of way for ditches, canals, tunnels, telephone, telegraph and electric power lines now constructed or to be constructed by the United States government in furtherance of the reclamation of arid lands, flood control, river regulation, conservation of water and transmission and distribution of electric energy.

(3) All conveyances of state lands shall contain a reservation of such rights of way easements. It is further provided that whenever said lands herein granted as rights of way shall cease to be used for such purpose, the same shall revert to the state of Montana, upon notice to that effect being given to the proper authorities.

(4) The mineral reservations now applying to sale of lands received through grants from the United States shall apply to all lands sold to the United States under this act, but all prospecting and exploration for minerals therein, the mining and removal thereof and all operations carried on in connection therewith, must be carried on in such manner and under such regulations that they will not interfere with the use of the lands for the purposes for which they have been purchased by the United States.

(5) Lands needed by the United States for any of the aforesaid purposes may be appraised or reappraised without appraising the remaining state lands in the county in which they are located. The lands shall be appraised at their full market value.

(6) The provisions of this act governing the sale of state lands to the United States shall also apply to the sale of state lands for projects financed by the United States under the administration of the state water conservation board, except as to appraisal by the United States.

History: En. Sec. 56, Ch. 60, L. 1927; Public Lands \approx 158½.
amd. Secs. 1, 2, 3, and 4, Ch. 37, Ex. L. 50 C.J. Public Lands § 648.
1933; amd. Sec. 1, Ch. 80, L. 1945.

81-802. (1805.57) Easements for school sites and grounds and other public uses. The state board of land commissioners is hereby authorized and empowered to grant easements in state lands for school house sites and grounds, for public parks, community buildings, cemeteries and other public uses upon proper applications accompanied by accurate and duly verified plats from the lawfully constituted authorities having charge of such properties. All such sites, grounds or tracts of land shall be rectangular or square in form unless natural obstacles in the land render such form impractical and shall whenever feasible be located at section corners or at a corner of that portion of the section which is owned by the state, and no easement of this character shall cover more than ten (10) acres of land, the acreage to be computed up to the center of the section line. Whenever the site so granted is located at a section corner or at a corner of the part of the land in the section owned by the state, the charge or compensation for the easement in the land shall be not less than twenty-five per centum (25%) above the appraised value of the land; whenever the site is located on a section line but not at a corner the charge or compensation shall be not less than fifty per cent (50%) above the appraised value of the land. Whenever the site is not located on the section line or lines as aforesaid, the charge or compensation to be paid to the state shall be determined by the board after examination of the land by the chief field agent or one of his assistants and report made by him. The board shall cause deeds to be issued for all such easements that it may grant.

History: En. Sec. 57, Ch. 60, L. 1927.

81-803. (1805.61) Easements on state land—application for—action on. (1) Application for easement on state land must be made to the state board of land commissioners and shall describe the proposed right of way according to survey, show the necessity for the proposed highway or street or other easement and give such additional information as the board may require. This application shall be accompanied by two exact copies of the official plat of the proposed highway, street or other easement duly verified

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Amended
L. '51, c. 99
Sec. 1, p. 162

by the affidavit of the county surveyor or county or city engineer, or other engineer having prepared the same, endorsed thereon. These plats shall show the quantity of land taken by the proposed highway or street or other easement for each forty-acre tract or government lot of state land over or through which it passes and also the amount of land remaining in each portion of such forty-acre tract or government lot. When deemed necessary by the board, the aforesaid plats shall show all these facts for such smaller subdivisions as the circumstances may render desirable for the state.

(2) Upon the filing of such application and plats, the commissioner of state lands and investments shall whenever he deems it necessary cause the proposed right of way to be viewed and examined by the chief field agent or some assistant field agent who shall report his findings to the board. The board shall thereupon consider the application and report and take such action as it deems proper, including the fixing of compensation and damages to be paid to the state. The compensation so fixed shall be the full market value of the estate or interest disposed of through the granting of such right of way easement, and the damages shall be the actual damages resulting to the remaining land as nearly as the same can be ascertained. If the right of way is granted according to the plat, then such plat shall become the official plat thereof, and shall be retained in the office of the commissioner. The board shall cause right of way deeds to be issued for all such easements that it may hereafter grant upon full payment therefor being made.

(3) If the state land over or through which such right of way is applied for, is under certificate of purchase or under sales contract, the purchaser, or his assignee, must be made a party to the proceedings, and his consent in writing to the laying out and establishment of the proposed highway and to the amount of compensation and damages to be paid must be filed with the board before such right of way shall be granted. The board shall be the judge of how much of such compensation and damages shall be paid to the state and applied on the certificate of purchase or sales contract and of how much thereof, if any, shall be paid to the purchaser, as the circumstances in each individual case may warrant. The provisions of this paragraph shall apply to all grants of rights of way on state lands.

History: En. Sec. 61, Ch. 60, L. 1927; Public Lands 158½.
amd. Sec. 1, Ch. 108, L. 1939. 50 C.J. Public Lands § 648.

81-804. (1805.62) Public uses for which easement granted. The state board of land commissioners may grant an easement for right of way across or upon any portion of state lands for any public highway, street or for any ditch, reservoir, railroad, private road, telegraph or telephone line, or for any other public use, as defined in section 93-9902; provided, that this section shall not be construed to grant authority to convey any such land, except for the purposes above set forth; and provided further, that whenever lands granted for any of the purposes mentioned in this section shall cease to be used for such purposes, said easement shall forthwith terminate upon notice to that effect to the person to whom such grant was made, served at his last known post office address. The board shall charge and

cause to be collected the full market value of the estate or interest disposed of through the granting of any such easement and also fix, charge and cause to be collected the amount of the actual damages resulting to the remaining land or lands from the granting of such easement as nearly as the same can be ascertained, providing, however, that where a road follows the section lines of state lands, the increased value accruing to said lands, on account of construction of a road on said right of way easement, shall be taken into consideration by the state board of land commissioners in determining compensation, if any, for the easement.

History: En. Sec. 62, Ch. 60, L. 1927;
amd. Sec. 2, Ch. 108, L. 1939.

81-805. (1805.63) Notice to lessee—settlement. Whenever any kind of right of way easement has been granted under this act and the state land in which it is granted is under lease, the party receiving such grant shall give due and timely notice to the lessee and shall make just settlement with him for any damages resulting to his improvements or crops or leasehold interests. Upon such settlement being made, the lessee shall open or move any fences that may obstruct the right of way over the lands under his lease and otherwise cooperate in the opening of the right of way. Proof shall be filed with the board that such settlement has been made before the deed to the easement is issued.

History: En. Sec. 63, Ch. 60, L. 1927;
amd. Sec. 3, Ch. 108, L. 1939.

CHAPTER 9

SALE OF STATE LANDS

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81-901. (1805.64) Certain state lands not subject to sale. Lands classified as timber lands shall not be subject to sale, but timber thereon may be sold and disposed of in the manner provided by law. (Lands which in the judgment of the board are likely to contain valuable deposits of coal, oil, oil shale, gas, phosphate, metals, sodium and, or other valuable mineral deposits, shall not be subject to sale, either the surface land or any of such deposits therein; provided, however, that this shall not be so construed as to prohibit the sale of lands containing sand, gravel, building stone, brick clay or similar materials.

History: En. Sec. 64, Ch. 60, L. 1927.

81-902. (1805.65) Mineral reservations in state lands. All coal, oil, oil shale, gas, phosphate, sodium and other mineral deposits, except sand, gravel, building stone and brick clay, in lands belonging to the state of Montana, or which may hereafter become the property of the state, which have not already been reserved by the United States, are hereby reserved to the state. All such deposits are reserved from sale except upon a rental and royalty basis, as provided by law. In the case of lands sold after this act takes effect, a purchaser of any lands belonging to the state or which may hereafter become the property of the state shall acquire no right, title, or interest in or to any of such deposits, except that where the oil and gas have not been reserved by the United States the purchaser of mortgage lands shall be entitled to receive a royalty of six and one-fourth per centum ($6\frac{1}{4}\%$) of all gas or oil produced from such mortgage lands, such royalty to be payable directly to him by the lessee either in gas or oil or in cash as the purchaser may desire and determine; provided, however, that the purchaser of the mortgage land shall not have any right to lease such land or any part thereof for oil and gas exploration or production; the state shall have the sole power to lease the land for all mineral purposes. The state also reserves for itself and its lessees the right to enter upon such lands to prospect for, develop, mine and remove such deposits and to occupy and use so much of the surface of the said lands as may be required for all purposes reasonably extending to the exploring for, mining and removal of such deposits therefrom, but the lessee shall make just payment to the purchaser for all damage done by reason of such entry upon the land and the use and occupancy of the surface thereof.

These mineral reservations shall not apply to lands that the state has acquired through the foreclosure of mortgages or otherwise acquired in

connection with mortgages given to it when the mortgagor or anyone claiming under him exercises his right to repurchase such lands within the statutory period of one year and ninety days from the time that the state so acquired title. In cases of this kind all rights shall go with the land that passed with the land from the mortgagor to the state; but in case that such lands are not so repurchased, then the same shall be subject to these mineral reservations the same as other state lands.

History: En. Sec. 65, Ch. 60, L. 1927; Mines and Minerals \S 1; Public Lands amd. Sec. 1, Ch. 28, L. 1929; amd. Sec. 1, \S 158½.
Ch. 183, L. 1935. 40 C.J. Mines and Minerals \S 115; 50 C.J. Public Lands \S 648.

81-903. (1805.66) Certain shore lands not subject to sale. There is also reserved from sale from all state lands bordering on navigable lakes or bordering on such nonnavigable meandered lakes as the board may deem valuable for summer resorts and from all state lands bordering on navigable streams a strip of land which shall include all the land lying between low-water mark and high-water mark and which in addition shall extend in width landward from the line of high-water mark of such lake or stream the full width of the forty (40) acre tract or government lot abutting the line of high-water mark; provided, however, that if the width of such abutting government lot at its narrowest point is less than one hundred (100) feet, then the strip hereby reserved shall extend to and include the next adjoining forty (40) acre tract or government lot. The land reserved from sale by this section shall be subject to the granting of easements the same as other state lands.

The state board of land commissioners may in its discretion cause any part of the lands bordering on such lakes and on navigable streams which are hereby reserved from sale to be surveyed and platted into blocks and lots, the lots to be not less than one hundred and twenty-five feet (125) in width, the width to be measured in the general direction of the abutting water front; but in all such surveys and plats the aforesaid strip of one hundred (100) feet in width along the water front shall be reserved for the use and enjoyment of the public.

Such strips of land bordering on meandering lakes or on navigable streams, except the strip lying between low-water and high-water mark, whether surveyed and platted into blocks and lots or not, may, however, be leased as provided in this act for the leasing of other state lands.

History: En. Sec. 66, Ch. 60, L. 1927.

81-904. (1805.67) Certain lands to be platted before sale. Any part of state lands adjacent to cities or towns and other state lands which in the opinion of the board may be wanted for residence or business lots shall before sale, at such time as the board may deem to be for the best interests of the state, be surveyed and laid off in blocks, lots, streets, alleys, avenues, highways, public squares, market places and parks, in conformity with the laws of the state for the survey and platting of townsites and additions thereto, conforming as nearly as may be with the ordinances of such city or town regarding the platting of additions thereto; and the state board of land commissioners must cause correct maps and plats of such lands to be made and recorded when so surveyed and not otherwise. No fee shall be charged

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by the county recorder, or by any city officer, for filing or recording such maps or plats, when recorded on behalf of the state.

Before the lands so surveyed and laid off are offered for sale the same shall be appraised, a separate appraisal to be placed on each lot. Such surveyed and platted land may then be sold in the same manner and upon the same terms and conditions as other state lands are sold.

History: En. Sec. 67, Ch. 60, L. 1927.

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Ref. to
L. '51, c. 104
Sec. 3, p. 172

81-905. (1805.68) Surveying and platting left to discretion of board. shall be entirely optional with the board whether or not state lands, or any part thereof, shall be surveyed, platted and laid off into blocks and lots as hereinabove provided, as may appear to be for the best interests of the state. All lands of the fourth class as defined by section 1, article XVII, of the constitution shall, however, be subdivided into lots or tracts of not more than five (5) acres each before being offered for sale and the lots must then be sold alternately as provided by section 2, article XVII, of the constitution, at regular sales of state lands.

When such tracts of five (5) acres each or less have been sold, the board shall whenever deemed necessary cause the plat thereof to be filed for record with the county clerk and recorder of the county in which the land is situated, but if the same purchaser bids in two or more adjoining lots or tracts, all the lots so purchased shall at the option of the purchaser be included in one certificate of purchase.

History: En. Sec. 68, Ch. 60, L. 1927.

81-906. (1805.69) Lands within federal irrigation projects. Whenever state lands are located within the boundaries of federal irrigation projects, the land shall be sold in conformity with the classification of farm units as made by the United States, and all certificates of purchase issued for such lands shall show that the lands are located within a federal irrigation project and are or will be liable for their proper share of the reclamation charges.

History: En. Sec. 69, Ch. 60, L. 1927.

81-907. (1805.70) Board to decide when to hold sales and what lands to sell. The state board of land commissioners is hereby vested with the power and authority to decide when sales of state lands are to be held and what state lands are to be offered for sale, subject to the limitations of this act, as the best interests of the state may appear to require; provided, however, that as a general rule no sale of state lands shall be held unless applications have been made for the purchase of lands within one (1) county by prospective purchasers representing at least twelve (12) families.

History: En. Sec. 70, Ch. 60, L. 1927.

81-908. (1805.71) Who may purchase and how much. State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens, or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of twenty-one (21) years. As far as possible to determine the lands shall be sold only to actual settlers or to persons who will improve the same, and not to persons who are likely to hold such lands

81-908
(1805.71 RCM
'35)
Amended
SL. '49, C. 95
Sec. 1, P. 196

for speculative purposes intending to resell the same at a higher price without having added anything to their value. No person or corporation shall be entitled to purchase more than one section of state land, and this area shall not include more than one hundred and sixty (160) acres of land susceptible of irrigation. These limitations as to area and irrigableness shall not apply to lands acquired by the state in connection with the foreclosure of its mortgages.

History: En. Sec. 71, Ch. 60, L. 1927.

81-909. (1805.72) **Sale at public auction, where held.** All sales of state lands shall be only at public auction held at the county court house of the county in which the lands are located; provided, however, that in case no suitable room can be found in such court house at the time for holding the sale, then the sale may be transferred to a more convenient place within a reasonable distance of such court house by public announcement made at the court house at the time fixed for beginning the sale; and provided further that the procedure for the sale of the so-called "mortgage lands" acquired by the state through the foreclosure of mortgages, or obtained otherwise in connection with such mortgages, shall be subject to the modifications hereinafter provided.

History: En. Sec. 72, Ch. 60, L. 1927.

81-910. (1805.73) **Notice of sale.** The commissioner shall cause notice of every such sale to be given by publication in the official county paper of the county where the sale is to be held once each week through four consecutive weeks next preceding the date of sale. Such notice, shall give the day, date and time of day of the beginning of the sale; shall contain a list of all the tracts to be offered for sale showing the township and range in which they are located, describing the same with reference to section number and subdivision of the section, or with reference to block and lot if surveyed, the number of acres in unplatted lands and the appraised value per acre and also the appraised value of each lot. As a general rule non-irrigable farming lands shall be listed in quarter sections; grazing lands may be listed in larger tracts not exceeding one (1) section. These limitations need not apply to mortgage lands.

81-910
Ref. to
L. '51, c. 104
Sec. 3, p. 172

For the convenience of the bidders, the commissioner may assign the tracts advertised a consecutive series of sales numbers and show the sales number of each tract in the notice of sale.

The notice shall also give the terms and conditions of sale, and such additional information as the commissioner may deem useful.

History: En. Sec. 73, Ch. 60, L. 1927.

81-911. (1805.74) **Mortgage lands to be included.** Whenever a sale of state lands is held in any county of the state, all the mortgage lands owned by the state in such county shall be offered for sale at the appraised value and included in the notice of sale herein provided for, whether such mortgage lands have been previously advertised for sale or not, unless the board for good reasons shall direct that such lands shall not be included in the sale.

History: En. Sec. 74, Ch. 60, L. 1927.

81-912. (1805.75) Regulations concerning sale—forfeiture for nonpayment—disposition of proceeds. At the time fixed for the sale, the lands shall be offered for sale at auction, in the order they appear in the notice of sale under the personal direction of the commissioner or the assistant commissioner, one of whom shall be present at the sale, and sold to the highest qualified bidder under the following restrictions: No lands shall be sold for less than the appraised value; tillable lands capable of producing agricultural crops shall not be sold for less than ten dollars (\$10.00) per acre, and lands principally valuable for grazing purposes shall not be sold for less than five dollars (\$5.00) per acre. These price limitations shall not apply to mortgage lands.

It is further provided that the lessee of the land need not make a higher bid than others, but shall if bidding an equal amount be given the preference. The lands shall be sold as nearly as practicable according to the subdivisions in which they are advertised, and care shall be taken not to subdivide any tract in such a way as to separate remaining portions from a water supply or from section lines or public highways. The sale may be adjourned from day to day until all the lands advertised have been offered for sale.

If any successful bidder at such sale refuses or neglects to make the initial payment required to be made on the land purchased by him, he shall forfeit to the state not less than fifty dollars (\$50.00) nor more than one thousand dollars (\$1000.00) to be determined by the state board of land commissioners according to the circumstances of the case. If such forfeiture is not paid when notice of the amount of the forfeiture has been served by the commissioner, the attorney general shall institute a suit for the recovery thereof in the name of the state of Montana.

The proceeds from the lands sold, including all subsequent payments on the principal, shall be credited to the permanent fund arising from the grant to which it belongs and shall become and forever remain an inseparable and inviolable part thereof. All payments on interest shall be credited to the proper income fund and shall be available for use as provided by law.

History: En. Sec. 75, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 177, L. 1933.

References

State ex rel. Handel Oil Co. v. State,
— M —, 167 P 2d 844, 846.

81-913. (1805.76) Board may prescribe additional rules and regulations. The state board of land commissioners may prescribe such additional rules and regulations for the conduct of these sales as in its judgment the interests of the state may demand.

History: En. Sec. 76, Ch. 60, L. 1927.

81-914. (1805.77) Mortgage lands may be sold on advertising for sealed bids. (1) Mortgage lands may also be advertised and sold at other than the regular sales of state lands at county seats whenever the board so orders, but such lands shall not be advertised and sold for less than the appraised value, and in all such cases the sale shall be at the office of the commissioner of state lands and investments at Helena, by means of sealed bids. Before mortgage lands can be so sold notice of the sale containing substantially the same information as the notice for the sale of other state lands must be

given by publication once each week for three (3) successive weeks in the official county paper of the county where the land is located. Sealed bids shall then be received by the commissioner not less than twenty (20) nor more than thirty (30) days from the date of the last publication of the notice of sale, and this date must be given in the notice. All bids must be accompanied by cash or a certified check for at least twenty per cent (20%) of the total amount bid, and in case the balance on the purchase price is not an exact multiple of twenty-five (\$25.00) dollars, then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five (\$25.00) dollars; he shall also in all cases pay the sum of five (\$5.00) dollars as a fee for each certificate of purchase to be issued to him.

(2) The balance of the purchase price shall draw interest at the rate of five per cent (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of twenty (20) years on the amortization plan, which is hereby defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full; provided, however, that the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments.

(3) On such date the bids shall be opened and the lessee of the lands shall be notified in writing of the highest bid, and if the lease of such lessee is in good standing the lessee shall be granted the preference right to purchase the lands at the highest bid made by any other bidder. If no bid is received the lessee shall be so notified and advised he may purchase at the advertised price.

(4) In the event some other person than such lessee becomes the purchaser he shall be required to make settlement with such lessee for all improvements on the land belonging to the lessee before the issuing of a certificate of purchase or deed. All provisions of the act relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee shall apply to the settlement on mortgage lands between a lessee and purchaser. The purchaser of the lands shall be given possession by the state on March first next succeeding the date of the sale.

(5) All sales of mortgage lands shall be subject to the approval and confirmation by the state board of land commissioners and no sale shall be deemed completed until after such approval and confirmation.

(6) After mortgage lands have once been advertised for sale either at the office of the commissioner or at a sale of state lands at the county seat of the county where they are located, and the same have not been sold, they may be sold by the commissioner at private sale at any time within two (2) years from the date fixed for the sale under the previous notice to any qualified person who will pay the appraised price as advertised and make the required initial payment.

History: En. Sec. 77, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 197, L. 1945.

81-915. (1805.79) Terms of payment. Every bidder upon state land of any class whatsoever shall accompany his bid with a certified check for not less than ten per centum (10%) of the total appraised sales price as advertised. Every purchaser of state land shall pay in cash on the day of sale such portion of the purchase price as he may desire but in no case less than ten per centum (10%) of the total sales price, and in case the balance on the purchase price is not an exact multiple of twenty-five dollars (\$25.00), then he shall pay such additional sum as is necessary to reduce the balance to an even multiple of twenty-five dollars (\$25.00); he shall also in all cases pay the sum of five dollars (\$5.00) as a fee for each certificate of purchase to be issued to him.

The balance of the purchase price shall draw interest at the rate of five per centum (5%) per annum, payable annually, and the balance of the purchase price itself shall be payable through a period of thirty-three (33) years on the amortization plan, which is hereby defined as being that plan under which part of the principal is required to be paid each time interest becomes due and payable, and under which this part payment on the principal increases at each succeeding installment in the same amount that the interest payment decreases so that the combined amount due on principal and interest on each due date remains the same until the loan or bond is paid in full; provided, however, that the amount of the last installment may vary from the other installments to the extent resulting from disregarding fractional cents in the previous installments; provided, however, that the balance of the purchase price on town and city lots shall be payable on the amortization plan through a period of twenty (20) years; and provided further that the board may at any time fix a shorter period than twenty (20) years for the payment of such balance on town and city lots, and different periods of time may be established for different towns and cities as the best interest of the state may appear to demand.

History: En. Sec. 79, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 149, L. 1939.

81-916. (1805.80) Conversion of certain other certificates to amortization certificates. Any certificate of purchase of state lands issued prior to February 13, 1923, and now in effect may be converted into an amortization certificate on the plan set forth in this act and running for a period of thirty-three (33) years from the date of conversion in the case of agricultural and grazing lands, and for a period of twenty (20) years in the case of town and city lots, upon application of the owner of such certificate, if the state board of land commissioners deems the issuance of such new amortization certificate safe and advantageous to the state. The said board may in its discretion allow to be included in the principal of the new certificate a portion of the delinquent installments of principal and interest if any on the old certificate, but there shall be charged and paid penalty interest on all such delinquent installments at the rate of six per centum (6%) per annum from the time they severally became due to the date of conversion; and the total amount due under the old certificate shall be reduced by payment to some multiple of twenty-five dollars (\$25.00) before the issuance of the new certificate; provided, however, that all such converted certificates shall give the state the same lien upon crops and improvements on

the land under the certificate as is provided in this act in the case of new certificates of purchase hereafter issued. The giving of such lien to the state in the new certificate shall be an absolute condition for the issuance of the new certificate.

History: En. Sec. 80, Ch. 60, L. 1927.

81-917. (1805.81) Lien on improvements and crops for principal, interest, penalty interest and taxes. The state shall have a lien prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in sections 45-701 and 45-801, which shall have priority as specified in section 52-301, upon all buildings, structures, fences and all other improvements upon the lands so sold and also upon all crops growing upon any of these lands, and also upon such crops after they have been separated from the lands, for all due and delinquent installments of principal and interest and penalty interest and taxes under the certificate of purchase and also for all installments becoming due during the calendar year in which the crop is harvested, and such lien is hereby expressly reserved. Any person purchasing or otherwise acquiring such improvements or crops or any part thereof, takes the same subject to such lien. Any agent or representative of the department or sheriff of the county in which the land is located, or his deputy may demand of the purchaser or his agent payment of the amounts due the state and if the same are not paid upon such demand, the officer making such demand, or any representative of the department, may forthwith seize such improvements and crops and upon giving three days' notice, sell and dispose of, either at private or public sale, sufficient of the said crops or improvements or of both to pay the amounts due the state together with cost and expenses of seizure and sale.

History: En. Sec. 81, Ch. 60, L. 1927.

81-918. (1805.82) Approval or disapproval of sales. All sales of state lands, and all sales of timber on state lands, shall be subject to the approval and confirmation by the state board of land commissioners, and no sale shall be deemed completed until after such approval and confirmation. The board shall have the power and it shall be its duty to disapprove any sale which in its opinion would be disadvantageous to the state.

History: En. Sec. 82, Ch. 60, L. 1927.

81-919. (1805.83) Settlement for improvements. Whenever any state land has been sold on which there are improvements belonging to a lessee, and some other person than such lessee becomes the purchaser he shall be required to make settlement with such lessee for all improvements on the land belonging to the lessee before the issuing of the certificate of purchase. All provisions of this act relating to the payment and settlement for improvements on state lands between a former lessee and a new lessee shall apply to the settlement between a lessee and the purchaser.

History: En. Sec. 83, Ch. 60, L. 1927.

81-920. (1805.84) Time of possession. In the case of lands under lease the purchaser shall be given possession by the state on March first next succeeding the date of sale and not before unless the lease expires prior to

that date, except through special agreement between the purchaser and the lessee.

History: En. Sec. 84, Ch. 60, L. 1927.

81-921. (1805.85) Certificate of purchase. Upon the approval of the sale and receipt of satisfactory evidence of settlement with the former lessee, if any, for improvements on the land, the commissioner shall execute and mail to the purchaser a certificate of purchase signed by the governor as president of the state board of land commissioners and by the commissioner as secretary of the board and attested by the seal of the state board of land commissioners. Such certificate of purchase shall contain the date of sale, the name and postoffice address of the purchaser, a description of the land, the total purchase price, the amount paid on the day of sale, the balance unpaid and shall also show the amount and due date of each installment of principal and interest to the time of maturity. The certificate shall reserve the easements for rights of way granted by the statutes in favor of the United States and other easements that may have been granted by the board and shall contain the reservations in favor of the state provided for in this act relating to coal, oil and mineral rights in the land.

The certificate shall also contain information in regard to the lien of the state on crops and improvements on the land for installments of principal and interest and taxes; and it shall contain such additional conditions, agreements, and information as the board may deem necessary in order to carry out the intent of this act.

History: En. Sec. 85, Ch. 60, L. 1927.

81-922. (1805.86) Time from which balance on purchase price draws interest. The balance of the purchase price shall draw interest from the date on which the sale was confirmed and approved by the state board of land commissioners, and all installments on principal and interest shall become due and payable on that date in each succeeding year until payment has been made in full.

History: En. Sec. 86, Ch. 60, L. 1927.

81-923. (1805.87) Payments of installments. The commissioner shall not be required to accept fractional payments of the installments on certificate of purchase, on account of the complications arising from the division of payments. The purchaser may make payment of one or more installments before the same become due but unless such payments are made at least six (6) months before the installments become due, no reduction shall be made in the interest payments. In case installments on principal and interest are paid more than six (6) months prior to the due date, then the interest from the date of such payment shall be figured upon the balance of the principal unpaid after such advance payment has been made up to the date on which it comes due. If for any reason any installment is not paid when due, then the total of such installment, including payment on the principal and payment on interest, shall draw penalty interest at the rate of six per centum (6%) per annum from the date due until the date actually paid. Payment may be made in full at any time before maturity by paying

the balance on the principal and interest accrued up to the date of such payment.

History: En. Sec. 87, Ch. 60, L. 1927.

81-924. (1805.88) Default in payment of purchase price—cancellation of certificate. Whenever any purchaser of state land hereafter sold, or the assignee, shall default for a period of thirty (30) days or more in the payment of any of the installments due on his certificate of purchase, the certificate shall be subject to cancellation and the board shall cause to be mailed to him at his last known postoffice address a notice of default and pending cancellation which notice shall give him sixty (60) additional days from the date of mailing such notice in which to make payment of the delinquent installment or installments with penalty interest. If he fails to make such payment within that period the certificate of purchase shall from that date and without further notice be null and void, the duplicate of the certificate in the office of the commissioner shall be canceled and the land under the certificate shall revert to the state and such land shall become the property of the state to the same extent as other state lands and shall be open to lease and sale, provided that all buildings, fences and other improvements placed thereon subsequent to the date of execution of such certificate of purchase shall be and remain the property of the purchaser named in said certificate of purchase or of his heirs, assigns, or devisees; and may be removed from such land at any time within ninety (90) days from and after the date of such cancellation. If such buildings, fences, and other improvements shall not have been removed prior to the expiration of such ninety (90) day period, they shall become the property of the state.

81-924
Amended
L. '51, c. 159
Sec. 1, p. 313

History: En. Sec. 88, Ch. 60, L. 1927;
amd. Sec. 4, Ch. 141, L. 1939.

References

Christofferson v. Chouteau County, 105
M 577, 583, 74 P 2d 427.

81-925. (1805.89) Reinstatement of canceled certificates of purchase—leases not affected. In all cases where a certificate of purchase of state lands has been canceled and annulled as provided by law, and the lands under such certificate have not been resold to another purchaser, the state board of land commissioners may in its discretion re-instate the canceled certificate upon proper application made in writing by the original purchaser or his heirs, assigns, or devisees, filed within one year and six months from such cancellation, and payment of all delinquent installments of principal and interest on the certificate together with penalty interest at the rate of six per centum (6%) per annum upon all such delinquent installments from the date due until the date of actual payment, and the furnishing of proof from the county treasurer showing that there are no tax liens against the land. This reinstatement shall not have the effect of cancelling any lease that the state may have issued on the land, or affecting any of the provisions of said lease.

History: En. Sec. 89, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 101, L. 1929.

Reinstatement

The right to reinstatement is not abso-

lute; it can only be made upon application by the original purchaser or his heirs, assigns or devisees. The right of reinstatement is not one which the board is bound to grant, but may do so in its discretion, and, the board is powerless to al-

low reinstatement in any event if the land purchaser. *Christofferson v. Chouteau* has been sold in the meantime to another County, 105 M 577, 583, 74 P 2d 427.

81-926. (1805.90) Certificates may be assigned. Certificates of purchase may be assigned to a citizen of the United States or to a person who has declared his intention to become such citizen or to a corporation organized under the laws of the state of Montana. Such assignments shall be made on forms to be prescribed by the commissioner, shall be duly acknowledged as other conveyances of real estate, and shall be executed in duplicate, one (1) copy to be filed and retained in the office of the commissioner and one (1) copy to be retained by the assignee. A person shall not be qualified to receive such assignment if the lands he has already purchased from the state together with the lands included in the assignment exceed one (1) section; the assignee must in all respects possess the same qualifications as an original purchaser.

History: En. Sec. 90, Ch. 60, L. 1927.

81-927. (1805.91) Lost certificate. Whenever any certificate of purchase to state lands has been lost or is wrongfully withheld by any person from the owner thereof the rightful owner may make application to the state board of land commissioners for issuing of a lieu certificate. This application shall be accompanied by an affidavit from the owner of the certificate setting forth the facts in regard to the loss or unlawful withholding of the certificate and by a certificate from the county clerk and recorder of the county in which the land is located showing all instruments of record in his office affecting the title to the land under the certificate. The board shall thereupon cause a lieu certificate of purchase to be issued to the applicant if in the judgment of the board the facts warrant the issue thereof.

History: En. Sec. 91, Ch. 60, L. 1927.

81-928. (1805.92) Land subject to taxation. The interest of the purchaser in state lands shall be subject to taxation to the full extent of such interest. The assessor shall assess the purchaser for such percentage of the full and true value of the land as the initial payment on the land and all installments of principal due on the certificate of purchase prior to the first Monday of March of the year for which the land is assessed is of the full purchase price of the land. Provided that the holder of certificate of purchase to lands within irrigation districts shall be liable for the entire tax levied against the land held thereunder on account of such irrigation district.

The improvements on the land shall be assessed and taxed as other improvements on farm lands.

On or before the fifteenth (15th) day of March of each year, the commissioner shall furnish the county assessor of each county with a complete list of all state lands sold in his county during the year ending on the first Monday of March of such year. This list shall show the name and address of the purchaser, give the legal description of the land, the acreage contained therein, the total purchase price, the amount paid thereon, and the balance unpaid. It shall also contain tables, or other information, which will enable the assessor to calculate what portion of the full value of the land will be subject to taxation for each succeeding year of the certificate.

History: En. Sec. 92, Ch. 60, L. 1927. M 577, 582, 74 P 2d 427; State ex rel. Washington Phosphate & Silver Co. v. State Board of Land Commissioners et al., 113 M 298, 302, 124 P 2d 1001.

References

Christofferson v. Chouteau County, 105

81-929. (1805.93) Purchaser of state lands may sign petitions relating to irrigation districts—interest of purchaser subject to lien—board may sign.

(1) A purchaser of state lands is hereby authorized and empowered to sign any petition that he may desire to sign for the creation of an irrigation district and the inclusion of the land purchased from the state in such irrigation district and any other petition relating to irrigation districts affecting the land so purchased by him from the state. Such petition or petitions shall have the effect of making all the interest that he then has in such land purchased from the state and all interest which he may subsequently acquire therein subject to the same liens and charges as privately owned lands under such irrigation district; and if for any reason his certificate to such state lands and his rights thereunder should be canceled and later such certificate be reinstated or a new certificate issued, such liens and charges shall stand against the interest in such lands of the holder of such certificate.

(2) The board for and on behalf of the state of Montana is hereby empowered to sign a petition for the inclusion of any lands belonging to the state in an irrigation district organized or to be organized for the purpose of cooperating with the United States under the federal reclamation laws or any act of Congress relating to reclamation projects, and to sign any petition for the execution of a contract between such district and the United States; provided however, that the interest of the state in any lands within an irrigation district shall not be subject to assessment or taxation for any purpose whatever, nor shall the state be liable for the payment of any costs or charges whatever arising from the fact that its lands are included within an irrigation district.

(3) The interest of a purchaser of state lands in the land purchased shall be subject to the same liens as other real estate; provided, however, that in the case of sale, only the interest of the purchaser or of the assignee shall be sold. In the case of any sale under the provisions of this section, including the sale for taxes, the purchaser shall succeed to all the rights of the purchaser from the state under the certificate of purchase and a new certificate of purchase shall be issued to the person entitled thereto, upon satisfactory proof being submitted to the board; provided, however, that in the case of sale under execution or decree of court such new certificate of purchase shall not be issued by the board until the period of redemption from such sale has expired and the sheriff's deed has been issued. In the case of sale for taxes, the new certificate shall not be issued until the tax deed has been issued.

History: En. Sec. 93, Ch. 60, L. 1927; Irrigation District v. Hyslop, 109 M 190, 195, 96 P 2d 273 (cited as Ch. 58, laws of 1929).

References

Tongue River and Yellowstone River

81-930. (1805.94) Lands reverting to state—procedure. In case any lands sold under the provisions of this act shall revert to the state, for any cause whatsoever, the commissioner of state lands shall notify the assessor

and the county treasurer of the county in which the land is situated, and upon the receipt of such notice it shall be the duty of the assessor to cancel any assessment of said land for that year, and of the county treasurer to cancel all taxes remaining unpaid against the land for that and all previous years.

History: En. Sec. 94, Ch. 60, L. 1927.

Constitutionality—Construction

Though this section declares that the state land commissioner upon cancellation of a certificate of sale of state lands, shall direct the county treasurer "to cancel the taxes" remaining unpaid is open to the

objection that under art. V, sec. 39 of the constitution, cancellation of an obligation due the state is prohibited, the statute may be properly construed as meaning no more than the cancellation of the tax lien against the land. *Christofferson v. Chouteau County*, 105 M 577, 583, 74 P 2d 427.

81-931. (1805.95) Patents. When the purchase price has been paid in full together with interest according to the certificate, the owner thereof shall be entitled to receive a patent for the land under such certificate.

History: En. Sec. 95, Ch. 60, L. 1927.

81-932. (1805.96) Patents, how executed. The governor, and in the case of his absence or inability, the lieutenant-governor shall be and is hereby authorized to execute deed or patent of conveyance transferring without covenants any and all lands sold by the state board of land commissioners under the laws of this state when full payment has been made therefor. Such deed or patent shall contain the reservation of easements for rights of way to the United States, reservation of all minerals in the land as provided in this act, and all other reservations to which the particular land conveyed may be subject. In case the land is located within the boundaries of a federal irrigation project, the patent shall contain a lien clause substantially in the following form: "The land hereby conveyed is located within the boundaries of a federal irrigation project and is subject to all liens which the United States may have thereon by reason of its being located under such irrigation project." Such deed or patent shall be attested by the secretary of state, countersigned by the commissioner and have the great seal of the state and the seal of the state board of land commissioners thereto attached, but need not be acknowledged. A certified copy of the record of any such deed or patent shall be received in evidence in all courts of record of this state the same as the original.

This section shall not be so construed, however, as to require any reservation in a patent which was not an express or implied reservation in the certificate of purchase pursuant to which the patent is issued; the statutes in effect when such certificate of purchase was issued must govern.

History: En. Sec. 96, Ch. 60, L. 1927.

81-933. (1805.97) Limitation for cancellation of patent. No action shall be brought to vacate or cancel any patent issued by the state after the expiration of two (2) years from the date of such patent, except upon the ground of fraud.

History: En. Sec. 97, Ch. 60, L. 1927.

81-934. Validation of certain state land purchase contracts. That all contracts executed between the years 1923 and 1928, both dates inclusive, which were entered into by the state of Montana through the state board of

land commissioners, for the sale of lands acquired by the state of Montana through the foreclosure of mortgages, or for sale of lands otherwise acquired by the state in connection with mortgages, wherein the mortgagor in any such mortgage to the state, or any one claiming under him, was the purchaser, are hereby validated and legalized, and no such contract shall be held invalid by reason of the fact that such contract for purchase was not entered into within one year and three months after the state of Montana foreclosed its mortgage, or otherwise took title to said lands in connection with said mortgage.

History: En. Sec. 1, Ch. 106, L. 1945.

81-935. Contract purchaser's title. That the contract purchaser referred to in section 81-934 shall, upon fulfillment of the terms of said contract, be entitled to a deed or patent from the state of Montana, conveying to said purchaser all the right, title and interest in said lands that the state acquired by the foreclosure or other conveyance to it of said lands, and the state of Montana hereby expressly waives all mineral, gas and oil rights that it might otherwise have in and to said lands were it not for this enactment.

History: En. Sec. 2, Ch. 106, L. 1945.

81-936. Validation of certain deeds issued in fulfillment of contracts. That all deeds heretofore issued upon the fulfillment of such contracts made and entered into as aforesaid between the state of Montana and a person who lost the lands described in said deeds to the state of Montana on mortgage foreclosure, or otherwise conveyed said land to the state of Montana in satisfaction of the mortgage, or any person claiming under such mortgagor, are hereby validated and legalized, and no such deed, or any part thereof, shall be declared void or inoperative because a contract so fulfilled was entered into more than one year and three months after the state of Montana foreclosed its mortgage, or otherwise took title to said lands, and all mineral, oil and gas rights not reserved in any such deed to the state of Montana are hereby waived and relinquished by the state of Montana unto the grantor in such deed.

History: En. Sec. 3, Ch. 106, L. 1945.

81-937. Sale of tract of state land authorized. The state board of land commissioners of the state of Montana is hereby authorized and empowered to sell to the highest qualified bidder at public auction at the Yellowstone county court house in Billings, Montana, and convey for cash or otherwise, the south half of the southeast quarter of the southeast quarter (S½SE¼ SE¼), section five (5), township one south (1S) range twenty-six east (26E), Montana principal meridian, comprising twenty (20) acres, Yellowstone County, Montana to the best interests of the state of Montana. Said board shall cause said land to be appraised by the chief field agent or a deputy field agent prior to such sale and said land shall not be sold for less than the appraised value. The land above described was acquired as a site for a sub-experimental station in 1903 in accordance with the provisions of Chapter 118 of the laws of 1903 and is not now being, and has not been for a considerable time, used for such purpose.

History: En. Sec. 1, Ch. 196, L. 1947.

81-938. Approval and confirmation of sale. The sale herein provided shall be subject to the approval and confirmation of the state board of land commissioners and shall not be deemed completed until after such approval and confirmation. The state board of land commissioners is authorized to reject any and all bids.

History: En. Sec. 2, Ch. 196, L. 1947.

81-939. Platting of land authorized at discretion of board. If the state board of land commissioners shall determine it is for the best interest of the state for the above described land to be surveyed, platted, and laid off into blocks and lots, said board is hereby authorized and empowered to proceed in accordance with the provisions of sections 81-904 and 81-905.

History: En. Sec. 3, Ch. 196, L. 1947.

81-940. Notice of sale. When directed by the state board of land commissioners, the commissioner of state lands shall cause publication of notice of such sale to be made once each week for four (4) successive weeks prior to the sale in a daily newspaper published in Billings, Montana. Such notice shall contain the information required by section 81-910 and, in addition, shall set forth the appraised value of the land to be sold, together with a statement said land will not be sold for less than said appraised value.

The public auction sale shall be held not less than ten (10) days nor more than twenty (20) days after the last publication of notice of sale.

History: En. Sec. 4, Ch. 196, L. 1947.

81-941. Costs and expenses—proceeds. Expense of conducting the sale, publication costs, survey and platting fees and charges, if the land be surveyed and platted, cost of purchasing improvements on said land, and all other costs necessary and incidental to such sale shall be paid only out of the proceeds from the sale. After all such expenses and costs are paid, the net proceeds of the sale shall be deposited with the state treasurer and credited to the state general fund.

History: En. Sec. 5, Ch. 196, L. 1947.

81-942. Reimbursement of lessee for improvements. If the land authorized herein to be sold be surveyed and platted prior to sale, the present lessees occupying such land shall be reimbursed for or may remove improvements, consisting of buildings and fences, which they own and have placed on said land. The state board of land commissioners is authorized and empowered to purchase and resell such improvements, if they be not removed from such land by the lessees thereof. If the improvements above mentioned be purchased by the state board of land commissioners and be later sold, proceeds from such sale of improvements shall be deposited in the state general fund. If the land be not surveyed and platted prior to sale, the purchaser or purchasers thereof shall make settlement for improvements as provided by section 81-919. In either case, if there be disagreement between the present lessees and the purchaser or purchasers or between the present lessees and the state board of land commissioners regarding the value of such improvements, the value of improvements shall be fixed by arbitration, as provided by section 81-406. Unless there shall be special agreements between the purchaser or purchasers and the present lessees to the contrary,

the purchaser or purchasers of the land shall be given possession of the land on March 1 next succeeding the date of the sale, and not before.

History: En. Sec. 6, Ch. 196, L. 1947.

CHAPTER 10

INVESTMENTS

- Section 81-1001. Investment of permanent funds.
 81-1002. Certain securities to be payable on the amortization plan.
 81-1003. Conversion of other forms of bonds into amortization bonds.
 81-1004. Purchase of county warrants or school district warrants.
 81-1005. Investment of income funds.
 81-1006. Approval of securities.
 81-1007. Securities, how paid.
 81-1008. Treasurer to preserve securities and keep records—method of remitting to state treasurer.
 81-1009. Conversion into amortization mortgages of state farm loans.
 81-1010. Lien on crops on mortgaged lands.
 81-1011. Attorney general to take charge of delinquent loans and mortgages.
 81-1012. Sheriff's deed may be taken by state—deficiency judgment.
 81-1013. The mortgagor and parties claiming under him may repurchase lands.
 81-1014. County commissioners to release certain liens.
 81-1015. County attorneys to represent the state.

81-1001. (1805.98) Investment of permanent funds. All moneys belonging to the public school permanent fund and to the other permanent funds of the educational, charitable and penal institutions of the state, and all permanent funds subject to the administration of the board under article XXI of the state constitution shall be safely invested by the state board of land commissioners in bonds of school districts within the state of Montana; in bonds of the several counties and cities of the state of Montana; in bonds of the state of Montana or of the United States; in capitol building bonds of the state of Montana, now issued or which may hereafter be issued; in bonds issued by the federal land banks, in interest-bearing warrants upon the general fund of the state and in interest-bearing warrants upon the general fund, the poor fund, the road fund, or upon the bridge fund of the several counties of the state of Montana; all of such investments to be subject to the regulations and limitations of this act.

History: En. Sec. 98, Ch. 60, L. 1927; Schools and School Districts 18; amd. Sec. 2, Ch. 139, L. 1933. States 124.

56 C.J. Schools and School Districts
 § 35 et seq.; 59 C.J. States § 374 et seq.

81-1002. (1805.99) Certain securities to be payable on the amortization plan. All bonds issued in this state in which such investments are hereafter made must be issued and payable on the amortization plan; provided, however, that in case there are not sufficient amortization bonds and amortization mortgages available to keep the aforesaid permanent funds invested, then the funds may be invested in other forms of bonds lawfully issued by the state of Montana or any of its political subdivisions; but this provision shall not be so construed as to allow the investment of any of these funds in irrigation district bonds or in any form of improvement district bonds. In negotiating for the purchase of bonds the board shall use its influence towards having the installments of principal and interest become payable

semi-annually in June and December of each year as far as practicable and consistent with other statutes.

History: En. Sec. 99, Ch. 60, L. 1927.

81-1003. (1805.100) Conversion of other forms of bonds into amortization bonds. All bonds in which such permanent funds of the state are now invested or in which they hereafter may be invested, whether such bonds are due or not, may be converted into amortization bonds payable through a period of not exceeding twenty (20) years upon resolution duly passed by the board or officers of the political subdivision of the state through which such bonds were originally issued, if the state board of land commissioners deems such change to amortization bonds to be safe and advantageous to the state and authorizes such change. The interest on such converted bonds shall be such as the state board of land commissioners may fix and determine in each individual case but shall not be less than the rate of interest on the bonds to be converted and shall in no case exceed six per centum (6%) per annum.

History: En. Sec. 100, Ch. 60, L. 1927.

81-1004. (1805.101) Purchase of county warrants or school district warrants. It shall be entirely optional with the board whether or not any portion of the aforesaid permanent funds shall at any time be invested in county warrants or school district warrants, as the circumstances in each individual case may appear to justify. In case of the investment in such warrants, such warrants must be purchased at face value without payment for accrued interest directly from the county issuing the same in amounts of not less than five hundred dollars (\$500.00) for each purchase; must be issued in the ordinary and regular course of business, and must be registered and drawing interest at the rate provided by law.

History: En. Sec. 101, Ch. 60, L. 1927.

Relief Warrants Issued by County

The state board of land commissioners may at its discretion purchase emergency

relief warrants, authorized by ch. 85, sec. 5, l. 1937 (omitted), for investment purposes. *Kraus v. Riley*, 107 M 116, 122, 80 P 2d 864.

81-1005. (1805.102) Investment of income funds. Moneys in the public school income fund and in other income funds for which there is no immediate demand, may be invested in state general fund warrants and in county warrants upon the general fund, the poor fund, the road fund, or school district warrants, subject to the limitations prescribed in the preceding section; provided, however, that they shall not be invested in such warrants, unless such warrants will be payable at such time as to make the income available when the funds are to be paid out for the purposes for which they are intended.

History: En. Sec. 102, Ch. 60, L. 1927.

81-1006. (1805.103) Approval of securities. The board shall not invest in any bonds unless a complete transcript of the proceedings for their issue has been submitted to the attorney general and his opinion rendered in writing finding that the bonds are lawfully issued and a valid indebtedness of the state, county, city or school district issuing the same.

History: En. Sec. 103, Ch. 60, L. 1927.

81-1007. (1805.104) Securities, how paid. Whenever the state board of land commissioners has purchased any bonds, county warrants, or school district warrants, the commissioner shall upon the final approval and receipt thereof, deliver such securities to the state treasurer, and shall at the same time write an order to the state auditor authorizing and directing him to issue his warrant or warrants upon the state treasurer, payable to the state treasurer, for the amount invested by the state in such security or securities and for the amount of accrued interest if any. Both the order to the auditor and the warrant or warrants issued by him to the treasurer shall show the fund or funds from which payment is to be made, the name and address of the person to whom it is to be made and the purpose of the payment. Upon the receipt of the securities and the warrant or warrants from the auditor the state treasurer shall promptly issue his check or checks and mail to the person entitled thereto.

History: En. Sec. 104, Ch. 60, L. 1927.

81-1008. (1805.105) Treasurer to preserve securities and keep records—method of remitting to state treasurer. The state treasurer shall safely keep and preserve all such securities and shall keep an accurate and complete record thereof; he shall notify the proper disbursing officers as to the maturity of coupons and bonds, and upon receipt of such notice the disbursing officers shall remit to the state treasurer in sufficient time for the remittance to reach the state treasurer on or prior to the dates of maturity, and the state treasurer shall thereupon cause such coupons and bonds to be canceled and forwarded by mail to such disbursing officers. The bonds and coupons which the state of Montana holds or hereafter may hold as investments of any funds subject to investment shall be deemed payable to the office of the state treasurer, and all disbursing officers are hereby required to make payment of same at the office of the state treasurer. The state treasurer shall notify the proper official or persons of delinquent payments, and shall keep accurate and complete account of all payments made.

History: En. Sec. 105, Ch. 60, L. 1927;
amd. Sec. 1, Ch. 26, L. 1931.

81-1009. (1805.106) Conversion into amortization mortgages of state farm loans. Whenever any state farm loan owned by the state when this act goes into effect becomes due or delinquent, the mortgagor or the assignee or vendee may make application to the state board of land commissioners to have the loan converted into a thirty-three (33) year amortization loan and mortgage, as defined in this act, to draw interest at the rate of six per centum (6%) per annum and to be secured by a first mortgage on the land under the original mortgage and by additional lands if he has additional lands free from prior liens and incumbrances, the amortization mortgage to be in such form as the state board of land commissioners may prescribe. The board may in its discretion permit delinquent interest, penalty interest and also any sums of money that the state has advanced under the mortgage to be included in the principal of the new loan and mortgage, if the state board deems the including of such delinquent interest and other payments made under the mortgage to be safe and advantageous to the state. Nothing herein contained shall be so construed as to make it obligatory upon

the board to permit a loan to be so converted into an amortization loan and amortization mortgage. The board shall at all times do what in its judgment appears to be for the best interest of the state and shall proceed to have the loan foreclosed if that appears to be the safest course to pursue. The provisions of this section shall also apply to non-delinquent mortgages as far as applicable.

History: En. Sec. 106, Ch. 60, L. 1927.

States~~124~~.

59 C.J. States § 374 et seq.

81-1010. (1805.107) Lien on crops on mortgaged lands. The state shall have a lien prior and superior to all other liens, excepting threshermen's liens and seed liens as specified in sections 45-701 and 45-801 which shall have priority as specified in 52-301, upon all crops growing on lands given it as security for any such amortization loan converted from another loan and also upon such crops after they have been separated from the land for any installment or installments of principal or interest due or delinquent on the loan together with penalty interest and also for all such installments becoming due during the calendar year in which such crops are harvested, and such lien is hereby expressly reserved. Any person purchasing or otherwise acquiring such crops, or any part thereof, takes the same subject to such lien.

Any officer, agent or person, empowered to represent the department is hereby authorized to seize such crops and upon giving three days' notice to sell, either at private or public sale, sufficient of the said crops to pay the amounts due and delinquent under the mortgage together with costs and expenses of sale. Every such amortization mortgage shall contain a reference to this lien on the crops.

History: En. Sec. 107, Ch. 60, L. 1927.

81-1011. (1805.108) Attorney general to take charge of delinquent loans and mortgages. Whenever any farm loan owned by the state when this act goes into effect becomes delinquent for more than one (1) year, and the mortgagor and his vendees fail to pay such loan and fail to have it converted into an amortization loan and mortgage, the commissioner shall notify the attorney general of the default in the conditions of the mortgage, and the attorney general shall then take full charge of such mortgage, and of all such mortgages, and shall proceed to foreclose such mortgages in the name of the state by action in the manner provided by law for the foreclosure of mortgages upon real estate. The attorney general may however, with the permission of the state board of land commissioners, given in writing in each particular case, permit the mortgagor or his vendee to convey the land under the mortgage by quit claim deed or other conveyance in place of securing title through foreclosure proceedings, if the lands are free and clear of all other liens and encumbrances except liens for taxes.

History: En. Sec. 108, Ch. 60, L. 1927.

Mortgages~~124~~; States~~124~~.

59 C.J. States § 374 et seq.

81-1012. (1805.109) Sheriff's deed may be taken by state—deficiency judgment. If at the foreclosure sale, no person bids the full amount due the state under the mortgage including all accrued interest on the loan, all

taxes paid by the state under the mortgage and taxes unpaid on the land, if any, and any expenses incurred by the state under the mortgage together with interest on all these items, and the costs and expenses of the foreclosure sale, all as allowed by the court, then in such case the land may either be sold for whatever reasonable sum it will bring and a deficiency judgment taken against the mortgagor or mortgagors, or the state may bid in the land for what it is reasonably worth to the state and a deficiency judgment taken for the balance, as the best interests of the state may appear to demand.

History: En. Sec. 109, Ch. 60, L. 1927. 42 C.J. Mortgages §§ 1832 et seq., 1974 et seq.; 59 C.J. States § 374 et seq.
Mortgages 516, 559(1); States 124.

81-1013. (1805.110) The mortgagor and parties claiming under him may repurchase lands. Upon written application made to the state board of land commissioners within one (1) year from the date of the sheriff's sale of the land to the state, or within one (1) year from the date of the quit claim deed or other conveyance to the state, by the original mortgagor or his heirs or assigns or other parties in interest of record, the state board may permit such original mortgagor or other person as aforesaid to repurchase the land for the full amount of the judgment of the state together with interest thereon at the rate of six per centum (6%) per annum from the date of judgment to the date of repurchase, or in the case of quit claim deed or other conveyance, for the full amount of the claim of the state on the date thereof together with interest thereon at the rate of six per centum (6%) per annum up to the date of repurchase, upon the following terms and conditions, to-wit:

The person so repurchasing the property shall pay in cash ten per centum (10%) of the entire judgment of the state against the land or of the claim of the state on the date of the quit claim deed or other conveyance together with interest thereon at the rate of six per centum (6%) per annum up to the date of such repurchase, and if such ten per centum (10%) does not leave a balance which is an even multiple of twenty-five dollars (\$25.00) then the purchaser shall pay such additional amount as will reduce the balance to an even multiple of twenty-five dollars (\$25.00); the balance of the repurchase sum shall draw interest at the rate of five per centum (5%) per annum payable annually and shall be payable on the amortization plan as defined in this act during a period of thirty-three (33) years. Such repurchase contract shall be in such form and shall contain such reservations and conditions as the state board of land commissioners may prescribe not inconsistent with law and shall be subject to the same provisions with regard to liens on crops on the land under the contract as is provided in this act in the case of former mortgages converted into amortization mortgages.

History: En. Sec. 110, Ch. 60, L. 1927. 42 C.J. Mortgages § 2067 et seq.; 59 C.J. States § 374 et seq.
Mortgages 591(1); States 124.

81-1014. (1805.111) County commissioners to release certain liens. The board of county commissioners of the several counties of the state are hereby empowered and directed to release and satisfy of record any seed

loan mortgage, drouth relief lien, or other similar instrument appearing on the county records as a second mortgage or lien against any lands on which the state holds a first mortgage whenever the attorney general shall request such cloud on the state's title to be removed and canceled.

History: En. Sec. 111, Ch. 60, L. 1927. 42 C.J. Mortgages § 932 et seq.; 59 C.J. States § 374 et seq.
Mortgages↪309(1); States↪124.

81-1015. (1805.112) County attorneys to represent the state. When so requested by the attorney general, the county attorney of each county in the state shall represent the state in all foreclosure proceedings, collections of delinquent rentals, actions for trespass on state lands and in all other state land matter that may arise in his county. The county attorneys shall not be entitled to charge the state any compensation for such services beyond their regular salaries.

History: En. Sec. 112, Ch. 60, L. 1927. 27 C.J.S. District and Prosecuting Attorneys § 12.
District and Prosecuting Attorneys↪7(1).

CHAPTER 11

STATE LANDS AND INVESTMENTS—MISCELLANEOUS PROVISIONS

- Section 81-1101. Acceptance of federal land grants.
81-1102. Gifts, donations, grants, legacies and devises to the state.
81-1103. Donations of land for forestry purposes.
81-1104. Expenditures authorized.
81-1105. Disposition of revenues and profits.
81-1106. Obligations, how payable.
81-1107. Power of sale.
81-1108. Board authorized to correct errors.
81-1109. Money paid by mistake to be refunded.
81-1110. Who may not buy or lease state lands.
81-1111. Violations of this act classified.
81-1112. Punishments.
81-1113. Fees.
81-1114. Findings of unconstitutionality—effect of.

81-1101. (1805.113) Acceptance of federal land grants. The federal land grants made to the state of Montana through the so-called enabling act having already been accepted as a whole through the adoption of the state constitution and specifically by subdivision 7 of ordinance No. 1 thereof, the state board of land commissioners is hereby authorized to accept any grant of lands from the United States to the state of Montana hereafter made in carrying out the provisions of the enabling act and also any other grant for any special purpose that may be made by the United States to the state of Montana. Any acceptance by the state board of land commissioners on behalf of the state of Montana, that has taken place prior to this act, of lands granted by the United States to the state of Montana is hereby ratified, confirmed and approved.

History: En. Sec. 113, Ch. 60, L. 1927. Public Lands↪51, 58, 62, 67.
50 C.J. Public Lands §§ 161 et seq., 257
Cross-Reference et seq., 304 et seq., 311 et seq.

State parks, sec. 62-301 et seq.

81-1102. (1805.114) Gifts, donations, grants, legacies and devises to the state. The state board of land commissioners is hereby authorized and empowered to accept on behalf of the state from any natural person gifts, donations, grants, legacies and devises having a value of not less than two hundred fifty dollars (\$250.00) from each person for any purpose authorized by article XXI of the constitution. All lands passing to the state under these provisions or through the operation of law, shall be managed as other state lands and the rents and earnings shall be applied in accordance with the object and purpose specified by the grantor, subject to all constitutional limitations. All money realized from the sale of such lands and from other property and all gifts, donations, grants, legacies, and devises made in money, or the equivalent of money, shall be administered by the board for the benefit of the specific purposes designated by the person from whom they were received as provided by article XXI of the constitution and as further regulated by this act. The provisions of this section shall apply to gifts, donations, grants, legacies and devises already made to the state and now under the administration of the board if not contrary to any specific provisions made therein by the persons from whom they were received.

History: En. Sec. 114, Ch. 60, L. 1927. 14 C.J.S. Colleges and Universities § 12;
56 C.J. Schools and School Districts § 33;
Colleges and Universities § 6(2); Schools and School Districts § 17; States § 127. 59 C.J. States § 378.

81-1103. Donations of land for forestry purposes. That the state board of land commissioners is hereby authorized to accept gifts, donations or contributions of land suitable for forestry or park purposes, and to enter into agreements with the federal government or other agencies for acquiring by lease, purchase or otherwise such lands as in the judgment of the state board of land commissioners are desirable for state forests.

History: En. Sec. 1, Ch. 159, L. 1937. States § 85.
59 C.J. States § 276 et seq.

81-1104. Expenditures authorized. When lands are acquired or leased under section 81-1103, the state board of land commissioners is hereby authorized to make expenditures from any funds not otherwise obligated, for the management, development and utilization of such areas; to sell or otherwise dispose of products from such lands, and to make such rules and regulations as may be necessary to carry out the purposes of this act.

History: En. Sec. 2, Ch. 159, L. 1937. States § 87, 119.
59 C.J. States § 342 et seq.

81-1105. Disposition of revenues and profits. All revenues derived from lands acquired under the provisions of this act shall be segregated by the state treasurer for the use of the state board of land commissioners in the acquisition, management, development and use of such lands until all obligations incurred have been paid in full. Thereafter, fifty per cent of all net profits accruing from the administration of such lands shall be applicable for such purposes as the legislature may prescribe, and fifty per cent shall be paid into the school fund of the county in which lands are located.

History: En. Sec. 3, Ch. 159, L. 1937.

81-1106. Obligations, how payable. Obligations for the acquisition of land incurred by the state board of land commissioners under the authority of this act shall be paid solely and exclusively from revenues derived from such lands and shall not impose any liability upon the general credit and taxing power of the state.

History: En. Sec. 4, Ch. 159, L. 1937.

81-1107. Power of sale. The state board of land commissioners shall have full power and authority to sell, exchange or lease lands under its jurisdiction by virtue of the act when, in its judgment, it is advantageous to the state to do so in the highest orderly development and management of state forests and state parks: Provided, however, that said sale, lease or exchange shall not be contrary to the terms of any contract which it has entered into.

History: En. Sec. 5, Ch. 159, L. 1937.

States⇌89.

59 C.J. States § 280.

81-1108. (1805.115) Board authorized to correct errors. The state board of land commissioners is hereby authorized, empowered and directed to cause to be corrected any and all errors, mistakes, and misdescriptions in any and all deeds and conveyances of property to the state of Montana; and in order to carry into effect the provisions hereof all deeds or such other conveyances as may be necessary shall be made and executed in the manner provided for the execution of patents by the state. The said board is also authorized and empowered to cause to be corrected any error or errors in leases, certificates of purchase, patents and other conveyances of property from the state upon satisfactory proof that an error or mistake has been made.

History: En. Sec. 115, Ch. 60, L. 1927.

States⇌85.

59 C.J. States § 276 et seq.

81-1109. (1805.116) Money paid by mistake to be refunded. If any money has been erroneously paid or shall hereafter be erroneously paid to the state on any permit, lease, certificate of purchase, patent or loan or in any other transaction, it shall be the duty of the state board of land commissioners to cause such money erroneously paid to the state to be refunded to the person entitled thereto from the proper fund.

History: En. Sec. 116, Ch. 60, L. 1927.

Where Mandamus Lies to Compel Refund

Moneys Never Becoming Part of State School Fund

Where the state board of land commissioners received money erroneously paid to it on a void contract of sale of state lands, such money never becomes a part of the common school fund, but the board under sec. 81-103, has control over the disposition thereof, and under this section has authority to refund it to the purchaser, a legislative appropriation not being required for that purpose; "appropriation" applying to state funds with reference exclusively to the general fund. *State ex rel. Boorman v. State Board of Land Commissioners*, 109 M 127, 134, 94 P 2d 201.

Mandamus lies to compel state boards and officers to perform a clear legal duty, such as is imposed upon the state board of land commissioners by this section to refund money erroneously paid to it on a contract of sale of state lands, where the contract is invalid, and may not be defended against on the theory that it is a suit against the state. *State ex rel. Boorman v. State Board of Land Commissioners*, 109 M 127, 138, 94 P 2d 201.

References

State ex rel. Washington Phosphate & Silver Co. v. State Board of Land Commissioners, 113 M 298, 301, 124 P 2d 1001.

States—123.

59 C.J. States § 376 et seq.

81-1110. (1805.117) Who may not buy or lease state lands. It shall be unlawful for any member of the state board of land commissioners, or any person or persons appraising lands, or in the employ of the state for the selection, classification, appraisal, sale, or leasing of any state lands or the timber thereon, or of any person connected with the state land office as an officer or employee, to purchase or lease, directly or indirectly, any of the land of the state or any timber thereon.

History: En. Sec. 117, Ch. 60, L. 1927.

81-1111. (1805.118) Violations of this act classified. Any officer, employee or representative of the state of Montana who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing or not performing an official act under the provisions of this act, or for modifying the performance thereof shall be guilty of a felony; any officer, employee or representative of the state who knowingly and wilfully makes any false classification or appraisal of any state land; or of any land offered the state for sale or offered as security for a loan from the state, or who falsely classifies or scales any timber on state lands or from state lands, or any timber in which the state is interested, or who knowingly and wilfully makes any false report of any such classification or appraisal or scaling shall be guilty of a felony; any officer, employee or representative of the state who otherwise violates any of the provisions of this act and such violation results in a loss to the state of one thousand dollars (\$1000.00), or more, shall be guilty of a felony; but if such violation results in a loss to the state of less than one thousand dollars (\$1000.00) or in no pecuniary loss, then he shall be guilty of a misdemeanor.

History: En. Sec. 118, Ch. 60, L. 1927.

States—81.

59 C.J. States § 229 et seq.

81-1112. (1805.119) Punishments. Any officer, employee or representative of the state who is found guilty of a felony as defined in the preceding section shall be punishable by imprisonment in the state penitentiary for not less than one (1), nor more than ten (10) years or with a fine which shall neither be less than five hundred dollars (\$500.00) nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted, or by both such imprisonment and fine. Any officer, employee or representative of the state who is found guilty of a misdemeanor as defined in the preceding section shall be punishable by imprisonment in a county jail for not to exceed one (1) year or by a fine which shall neither be less than one hundred dollars (\$100.00) nor less than twice the amount of the loss that resulted to the state through the crime of which he has been convicted, or by both such imprisonment and fine.

History: En. Sec. 119, Ch. 60, L. 1927.

81-1113. (1805.120) Fees. The commissioner of state lands and investments is hereby authorized and empowered and it is hereby made his duty to charge and collect the following fees:

Issuing miner's prospecting permit—ten dollars (\$10.00) for each permit, or such greater fee as the board may fix in each case.

Issuing any other permit—one dollar (\$1.00).

Issuing any lease with or without bond—two dollars and fifty cents (\$2.50).

Issuing any certificate of purchase or lieu certificate or converted certificate or purchase contract—five dollars (\$5.00).

Approving and entering assignment of lease or certificate of purchase—one dollar (\$1.00).

Deed for right-of-way easement or other easement—five dollars (\$5.00).

Patent to any land sold—five dollars (\$5.00).

Certified copy of any of the instruments above enumerated, one-half the fee required for issuing the original instrument.

Making township plats showing the state lands therein and giving other information, such fee as the board may fix to be graduated according to the amount of work required.

Certified copy of any other instrument than those above enumerated or of the records of his office shall be furnished at the rate of twenty cents (.20) per folio of one hundred (100) words and one dollar (\$1.00) for the certificate.

The board shall fix the fees to be charged and collected for specific services by the commissioner not enumerated in this section.

History: En. Sec. 120, Ch. 60, L. 1927.

40 C.J. Mines and Minerals § 409 et seq.;
50 C.J. Public Lands § 648.

Mines and Minerals 6; Public Lands
158½.

81-1114. (1805.121) Findings of unconstitutionality—effect of. If any subdivision, section or part of section of this act should be found to be unconstitutional by the supreme court of this state, such finding of unconstitutionality shall not affect the remainder of the act but such remainder shall remain in full force and effect and shall be carried out, and the state board of land commissioners is hereby specifically charged with the duty of bridging over as far as possible any gap which might result in case any portion or portions of this act should be found unconstitutional by exercising the general grant of powers given to it by the constitution of the state.

History: En. Sec. 122, Ch. 60, L. 1927.

Statutes 64(2).

59 C.J. Statutes § 213.

CHAPTER 12

CROW INDIAN LANDS

Section 81-1201. Allotment of lands to Crow Indian Tribe—preamble.

81-1202. Acceptance of act of congress relative to Crow Indian reservation.

81-1203. Same—children permitted to attend public schools.

81-1201. (1806) Allotment of lands to Crow Indian tribe—preamble. Whereas, the act of the 66th Congress, No. 239, entitled: "An act to provide for the allotment of lands of the Crow tribe, for the distribution of tribal funds, and for other purposes," provides in section sixteen thereof, among other things, as follows:

"That there is hereby granted to the state of Montana for common-school purposes sections sixteen and thirty-six, within the territory described herein, or such parts of said sections as may be non-mineral or non-timbered,

and for which the said state has not heretofore received indemnity lands under existing laws; and in case either of said sections or parts thereof is lost to the state by reason of allotment or otherwise, the governor of said state, with the approval of the secretary of the interior, is hereby authorized to select other unoccupied, unreserved, non-mineral, non-timbered lands within said reservation, not exceeding two sections in any one township. The United States shall pay the Indians for the lands so granted five dollars per acre, and sufficient money is hereby appropriated out of the treasury of the United States not otherwise appropriated to pay for said school lands granted to the said state; provided, that the mineral rights in said school lands are hereby reserved for the benefit of the Crow tribe of Indians as herein authorized; provided, further, that the Crow Indian children shall be permitted to attend the public schools of said state on the same condition as the children of white citizens of said state."

History: En. preamble to Sec. 1, Ch. Public Lands 51.
 119, L. 1921; re-en. Sec. 1806, R. C. M. 50 C.J. Public Lands § 161 et seq.
 1921. 27 Am. Jur. 555, Indians, §§ 24-41.

81-1202. (1807) Acceptance of act of congress relative to Crow Indian reservation. For the purpose of enabling the state of Montana to take advantage of the grant made by the aforesaid public act No. 239 of the 66th Congress, the state of Montana hereby accepts said grant for common-school purposes of sections sixteen and thirty-six, within the Crow Indian reservation, or such parts of said sections as may be non-mineral or non-timbered, and for which the said state has not heretofore received indemnity lands under existing laws; and in case either of said sections or parts thereof is lost to the state by reason of allotment or otherwise, the governor of Montana, with the approval of the secretary of the interior, is hereby authorized to select other unoccupied, unreserved, non-mineral, non-timbered lands within said reservation, not exceeding two sections in any one township.

History: En. Sec. 1, Ch. 119, L. 1921;
 re-en. Sec. 1807, R. C. M. 1921.

81-1203. (1808) Same—children permitted to attend public schools. The Crow Indian children residing in the state of Montana shall be hereafter permitted to attend the public schools of the state of Montana on the same conditions as the children of white citizens of the said state.

History: En. Sec. 2, Ch. 119, L. 1921; Indians 8.
 re-en. Sec. 1808, R. C. M. 1921. 42 C.J.S. Indians § 23.

CHAPTER 13

REIMBURSEMENT OF FEDERAL GOVERNMENT FOR CERTAIN EMERGENCY CONSERVATION WORK

Section 81-1301. Reimbursement of federal government for emergency conservation work resulting in profit to the state.

81-1301. (1808.1) Reimbursement of federal government for emergency conservation work resulting in profit to the state. If, upon a sale of state land or its products the state board of land commissioners determines that

the state has derived a direct profit as the result of work on the land sold, or on land the products of which are sold, done or to be done under a project carried on pursuant to an act of congress entitled "An act for the relief of unemployment through the performance of useful public work, and for other purposes," approved March thirty-first, nineteen hundred and thirty-three, one-half of such direct profit as the result of work on the land sold, or on land the products of which are sold, shall be applied to or toward reimbursing the United States government for moneys expended by it under such act for work so done, to the extent and at the rate of one dollar per man per day for the time spent at such work but not exceeding in the aggregate three dollars per acre. The said board shall fix and determine the amount of such direct profit. Such one-half part of such direct profit shall be paid to the state treasurer to be held as a separate fund until the account of the United States government with respect to such sale, becomes liquidated. Upon the completion of the sale, the said board is hereby authorized to settle with the proper federal authority an account fixing the amount due the United States government and to pay over to it the amount so fixed. This section shall not be construed to authorize the sale of state lands or products but applies only to a sale now or hereafter authorized by other provisions of law. This section is enacted to procure a continuance of emergency conservation work within the state, under such act of Congress.

History: En. Sec. 1, Ch. 158, L. 1935.

Public Lands \Rightarrow 158½.

50 C.J. Public Lands § 648.

CHAPTER 14

STATE FORESTS—FORESTER—TIMBER SALES—FIRE WARDENS

- Section 81-1401. Classification of lands as state forests.
 81-1402. Designation of state forests.
 81-1403. State forester—appointment—compensation—term—assistants—bond.
 81-1404. Sale of timber—advertising for bids—purchaser's agreement.
 81-1405. Bond of purchaser of timber.
 81-1406. Breach of timber sale agreement.
 81-1407. Permits to remove timber for fuel.
 81-1408. Duties of state forester concerning timber sales—scaling when title passes.
 81-1409. Cooperation with owners and lessees.
 81-1410. Forester's cooperative work fund.
 81-1411. Duties of state forester.
 81-1412. Fire wardens.
 81-1413. Powers of fire wardens.
 81-1414. Additional powers of fire wardens.
 81-1415. Duties of fire wardens and forester.
 81-1416. Prosecutions.

81-1401. (1830.1) Classification of lands as state forests. That all lands at present owned by the state of Montana, and all that may hereafter be acquired by the state through escheat, exchange, purchase, grant or devise, which are principally valuable for the timber that is on them, or for the growing of timber or for watershed protection, are hereby classified and designated "State Forests," and reserved for forest production and watershed protection.

History: En. Sec. 1, Ch. 179, L. 1925.

81-1402. (1830.2) **Designation of state forests.** That the following state forest units are hereby established, primarily to secure through forestry management a continuous supply of timber and the performance of watershed covers:

(a) A state forest containing lands owned or hereafter acquired by the state, now comprising about 90,000 acres, situated in the watersheds of the Stillwater and Whitefish rivers of Flathead and Lincoln counties, shall hereafter be known and designated as the "Stillwater State Forest."

(b) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 42,000 acres, situated in the Swan river watershed of Lake county, shall hereafter be known and designated as the "Swan River State Forest."

(c) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 20,000 acres, situated in the Coal Creek watershed of the North Fork of the Flathead river, shall hereafter be known and designated as the "Coal Creek State Forest."

(d) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 10,000 acres situated in the watersheds of Camp and Cameron creeks of Ross Hole of Ravalli county, shall hereafter be known and designated as the "Sula State Forest."

(e) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 14,628 acres, situated in the west half of township 25 north, range 26 west; and township 23 north, range 27 west; and west half of township 22 north, range 26 west; and township 21 north, range 26 west, except sections 4, 5, 6, 7, 8 and 18, in the Thompson river watershed of Sanders county, shall hereafter be known and designated as the "Thompson River State Forest."

(f) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 18,076 acres situated in townships 13, 14 and 15 north, range 14 west; and townships 13 and 16 north, range 15 west, Montana meridian, in the Clearwater river watershed of Missoula county, shall hereafter be known and designated as the "Clearwater State Forest."

(g) A state forest containing all lands owned or hereafter acquired by the state, now comprising about 8,245 acres, situated in township 14 north, ranges 7, 8 and 9 west; and township 13 north, ranges 8 and 9 west, Montana meridian, of the Blackfoot river watershed in Lewis and Clark county, shall hereafter be known and designated as the "Lincoln State Forest."

History: En. Sec. 2, Ch. 179, L. 1925.

81-1403. (1830.3) **State forester—appointment—compensation—term—assistants—bond.** That the governor by and with the advice and consent of the senate shall appoint a state forester to have general charge of all the state forests, who shall be an elector of the state of Montana, trained and experienced in forestry, whose salary shall be \$3,000.00 per annum, and actual, necessary expenses while engaged in outside work in connection with his office, payable monthly from the state's general fund, and whose term of office shall be for four years; with the consent and approval of the state board of land commissioners, the state forester shall appoint such office

81-1403
(1830.3 RCM
'35)
Amended
SL. '49, C. 161
Sec. 1, P. 351

help, forest wardens, scalers, cruisers, estimators and forest assistants as may be necessary for the administration of the forests, and fix their salaries and expenses. He shall give a satisfactory bond to the state of Montana in the sum of two thousand dollars, as guarantee for the faithful performance of his duties.

History: En. Sec. 3, Ch. 179, L. 1925. Woods and Forests 7.

NOTE.—Bond is given as fixed by Sec. 71 C.J. Woods and Forests § 23. 6-101.

81-1404. (1830.4) Sale of timber—advertising for bids—purchaser's agreement. Under the direction of the state board of land commissioners, the state forester may sell the timber crop and other crops of the forests, after examination, estimate, appraisal and report, and under such rules and regulations as may be established by the state board of land commissioners; provided, that any timber proposed for sale in excess of 100,000 feet board measure shall be advertised in a paper of the county in which the timber is situated for a period of at least thirty days, during which time the state forester shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale. Right is reserved to the state forester to reject any or all bids, upon approval of the board; or he shall award the sale to the highest responsible bidder. Upon award of sale the purchaser shall execute a formal agreement, approved by the state land board, which shall describe the area on which the timber is to be cut, the approximate quantity to be cut by species, the rate for each product of each species, and shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling and slash disposal, and such other rules as in the discretion of the state board of land commissioners, are essential to the perpetuation of the state forests.

History: En. Sec. 4, Ch. 179, L. 1925. Public Lands 16.

50 C.J. Public Lands § 34.

81-1405. (1830.5) Bond of purchaser of timber. As a guarantee for the faithful performance of the agreement, the purchaser shall be required to furnish a bond, with sufficient sureties, to the state of Montana, in an amount equal to at least 20% of the estimated value of timber sold.

History: En. Sec. 5, Ch. 179, L. 1925.

81-1406. (1830.6) Breach of timber sale agreement. For breach of timber sale agreement, the state forester is authorized to suspend cutting or removal of the timber, if by him deemed necessary, and to take such steps as are advisable upon advice and counsel of the attorney general to adjust the breach or to liquidate the state's claim for damages or he may submit the case with full report as to damages sustained by the state to the attorney general for collection on the bond.

History: En. Sec. 6, Ch. 179, L. 1925.

81-1407. (1830.7) Permits to remove timber for fuel. Permits may be issued free of charge for dead, down or inferior timber in such quantities and under such restrictions and regulations as the state land board may approve for fuel and domestic purposes to residents and settlers of the state.

Permits may be issued to citizens of the state for commercial purposes at commercial rates without advertising under such restrictions and rules as the state land board may approve for timber in quantities of less than 100,000 feet board measure; provided, repeated permits of this kind shall not be issued to avoid advertising and the consequent competition secured thereby.

Permits for cutting and removal of timber may be issued to farmers, ranchers and prospectors with such restrictions and regulations as the board may approve for timber in quantities of twenty-five thousand feet board measure, or less, when it is to be used for domestic purposes in the repair and development of the ranch or farm; provided, that not to exceed twenty-five thousand feet board measure shall be granted in any one year to any one person; and provided, that the rates of charge for such permits shall be fixed by the state land board.

History: En. Sec. 7, Ch. 179, L. 1925.

81-1408. (1830.8) Duties of state forester concerning timber sales—scaling when title passes. It shall be the duty of the state forester to supervise all the state timber sales, to secure payment to the state treasurer for all the timber before it is cut, to secure the most complete utilization of all forest products consistent with the current lumbering practice. It shall be his duty to instruct and supervise the cruisers, forest wardens and scalers in the conduct of their work; and to fix and establish the standard practice in timber sales administration. He shall require that each merchantable log be scaled by the Scribner decimal C. log rule inside the bark at the small end, and that the deduction be made for all visible cull. He shall fix and determine converting factors and units of measure for all forest products other than saw logs, which shall be as nearly as practical equivalent to the decimal C. log scale. He shall require that all merchantable logs sold be numbered consecutively on at least one end, and that the corresponding numbers and the scale therefor be entered in a scale book, which shall be retained as a permanent public record showing date of scale, the designation of the sale, and the name of the scaler or scalers who did the work. He shall also require that each merchantable saw log, stull, tie, post, pole or other piece of timber be stamped on one or both ends with the official state timber mark, which is hereby authorized and designated thus, "S-T", signifying "state timber"; provided, however, in the event of small sales of timber to individuals or others, where the volume of timber involved is not in excess of one million board feet (1,000,000) log scale, the state forester is authorized to designate each tree to be cut and make a tree scale measurement of all trees to be sold.

History: En. Sec. 8, Ch. 179, L. 1925;
amd. Sec. 1, Ch. 40, L. 1945.

81-1409. (1830.9) Cooperation with owners and lessees. For the purpose of more adequately promoting and facilitating the co-operation, financial and otherwise, between the state of Montana and all of the public and private agencies or individuals therein, the state board of forestry is hereby authorized to co-operate with owners or lessees of farm, range, forest, watershed or other uncultivated lands in private and public ownership for the

protection from fire of the cultivated agricultural crops or natural resources existing or growing thereon; and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow.

History: En. Sec. 9, Ch. 179, L. 1925; Woods and Forests 5.
amd. Sec. 1, Ch. 193, L. 1947. 71 C.J. Woods and Forests § 402.

81-1410. (1830.10) Forester's cooperative work fund. The state treasurer is hereby authorized to receive moneys that may be appropriated or allotted for the purposes named in section 81-1409, by the state, counties, municipalities, the United States government or any department thereof, or other organization or individual. The state treasurer shall deposit such moneys in a special fund to be known as the forester's cooperative work fund, and the state auditor is hereby directed to draw his warrant or warrants for payments from said fund for the purposes aforesaid upon receipt of vouchers approved by the state forester.

History: En. Sec. 10, Ch. 179, L. 1925.

81-1411. (1831) Duties of state forester. The state forester shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisement, and re-appraisement of state timber lands, whether now belonging to the state or hereafter granted to the state; he shall do all acts required of him to be performed by the said board, and under the direction of said board shall have general charge of the timber lands of the state. He shall act as secretary of the forestry board. He shall, under the supervision of the state board of land commissioners, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all fire wardens of the state, and direct and aid them in their duties; direct the protection and improvement of state parks and forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brush-covered lands, and prosecute for any violation of such laws. He shall deliver a course of at least six lectures on practical forestry to the students attending the state university, the state agricultural college, and the state normal school, during each school year. He shall prepare annually a report to the governor on the progress and condition of the state forest park, and recommend therein plans for improving the state system of forest protection, management, and replacement. He shall furnish notices, printed in large letters, on cloth, calling attention to the danger from forest fires, and to the forest fire and trespass laws and their penalties. Such notices shall be posted by the fire warden in conspicuous places in the several counties of the state, and particularly in brush and forest-covered country, at frequent intervals along streams and lakes frequented by tourists, hunters, and fishermen, at established camping sites, and in every post office in the forested region.

History: En. Sec. 10, Ch. 147, L. 1909; Woods and Forests 7.
amd. Sec. 2, Ch. 118, L. 1911; re-en. Sec. 71 C.J. Woods and Forests § 40.
1831, R. C. M. 1921.

81-1412. (1833) Fire wardens. The state forester shall appoint in such number and localities as he deems wise, public-spirited citizens to act as

volunteer fire wardens. Every sheriff, under-sheriff, deputy sheriff, game warden, and deputy game warden shall be ex officio a fire warden, but shall not receive any additional compensation by reason of the duties hereby imposed, and they shall be deemed paid fire wardens under the terms of this act. The supervisors and rangers of the federal forest reserves within this state, whenever they formally accept the duties and responsibilities of fire wardens, may be appointed volunteer fire wardens, and shall have all the powers given to fire wardens by this act. The fire wardens shall promptly report all fires to the state board of forestry, take immediate and active steps toward their extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders.

History: En. Sec. 11, Ch. 147, L. 1909;
re-en. Sec. 1833, R. C. M. 1921.

81-1413. (1834) Powers of fire wardens. The state forester and all fire wardens shall have the power of peace officers to make arrests without warrants for violations, in their presence, of any state or federal forest laws, and no fire warden shall be liable for civil action for trespass committed in the discharge of his duties. Any fire warden who has information which shows, with reasonable certainty, that any person has violated any provision of such forest laws, shall immediately take action against the offender, by making complaint before the proper magistrate, or by information to the proper county attorney, and shall obtain all possible evidence pertaining thereto. Failure on the part of any paid fire warden to comply with the duties prescribed in this act shall be a misdemeanor, and punishable by a fine of not less than twenty dollars nor more than one thousand dollars, or imprisonment in the county jail for not less than ten days nor more than twelve months, or by both such fine and imprisonment; and upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof.

History: En. Sec. 12, Ch. 147, L. 1909;
re-en. Sec. 1834, R. C. M. 1921.

81-1414. (1835) Additional powers of fire wardens. All fire wardens shall have authority to call upon any able-bodied citizen between the ages of eighteen and fifty years, resident in the vicinity, for assistance in putting out fires; and any such person who refuses to obey such summons, except for good and sufficient reason, is guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than fifteen nor more than fifty dollars, or imprisonment in the county jail not less than one nor more than thirty days, or both such fine and imprisonment; provided, that no citizen shall be called upon to fight fire a total of more than five days in one year.

History: En. Sec. 13, Ch. 147, L. 1909;
re-en. Sec. 1835, R. C. M. 1921.

81-1415. (1836) Duties of fire wardens and forester. The state forester, assistant forester, and all fire wardens (except volunteer wardens), under such rules and regulations as the state board of land commissioners may provide, shall protect the timber of the state, and especially the timber owned by the state, from destruction by fire, and for such purpose, in emergencies, may employ men and incur other expenses, when necessary; pro-

vided, that no fire warden shall incur any expense in excess of fifty dollars, without express authority of the state board of land commissioners.

History: En. Sec. 14, Ch. 147, L. 1909;
re-en. Sec. 1836, R. C. M. 1921.

81-1416. (1839) Prosecutions. Whenever an arrest shall be made for any violation of the provisions of this act, or whenever any information of such violations shall be lodged with him, the county attorney of the county in which this act was committed must prosecute the offender or offenders, if in his judgment the facts warrant the same. If any county attorney shall fail to comply with the provisions of this section, he shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than one hundred dollars nor more than one thousand dollars; and upon his conviction, the district court wherein he is convicted shall forthwith declare his office vacant, and notify the proper appointing power thereof. Actions against the county attorney shall be brought by the attorney general in the name of the state. The penalties of this section shall also apply to any magistrate, with proper authority, who refuses or neglects to cause the arrest and prosecution of any person or persons, when a complaint under oath of a violation of any of the provisions of this act has been lodged with him.

History: En. Sec. 17, Ch. 147, L. 1909; District and Prosecuting Attorneys
re-en. Sec. 1839, R. C. M. 1921. 2(5), 11.
27 C.J.S. District and Prosecuting Attorneys §§ 6, 7, 9, 17.

CHAPTER 15

PORTABLE SAW MILLS ON FOREST LAND—LICENSE AND REGULATION

- Section 81-1501. Portable saw mill license required.
81-1502. Application for license—fee.
81-1503. Issuance of license—term.
81-1504. Revocation of license for violation of law.
81-1505. Portable saw mill defined.
81-1506. Penalty for violations.

81-1501. (1839.1) Portable sawmill license required. That it shall be unlawful to operate a portable sawmill located upon forest lands within the state of Montana without first obtaining a license therefor from the state forester of the state of Montana.

History: En. Sec. 1, Ch. 124, L. 1931. Woods and Forests 9 et seq.
71 C.J. Woods and Forests § 23.

Cross-Reference

Refuse from mill not to be dumped into streams, sec. 26-339.

81-1502. (1839.2) Application for license—fee. Whenever any person, firm or corporation desires to commence the operation of a portable sawmill located or to be located upon forest lands within the state of Montana, such person, firm or corporation shall make application to the state forester of the state of Montana in writing for a license to operate said portable sawmill. Said application shall disclose to the state forester the name of the person, firm or corporation contemplating the operation of said sawmill, the location thereof by section, township and range numbers, the rated capacity of said sawmill and the approximate amount of stumpage to be cut at the pro-

posed setting and the approximate date desired for the commencement of said operation. Said application shall be accompanied by the payment of a fee of two dollars (\$2.00), which is fixed as the license fee for the operation of any portable sawmill, to be credited to the foresters' co-operative fund.

History: En. Sec. 2, Ch. 124, L. 1931.

81-1503. (1839.3) Issuance of license—term. Upon the receipt of such application and the payment of the fee herewith provided, the state forester shall issue a license to the person, firm or corporation applying therefor, which said license shall be upon a form provided by the state forester and shall cover such period as said sawmill shall remain in continuous operation on a single setting or location, or until revocation by the state forester.

History: En. Sec. 3, Ch. 124, L. 1931.

81-1504. (1839.4) Revocation of license for violation of law. Whenever it shall appear that there is a violation of any law of the state of Montana enacted for the protection of the forest and forest lands of said state in connection with the operation of said portable sawmill or in the protection of the lands from which the timber sawed or to be sawed at said mill is cut, the state forester may in the exercise of his discretion revoke said license and thereby suspend the operation of such sawmill until the conditions constituting a violation of law shall have been remedied and removed.

History: En. Sec. 4, Ch. 124, L. 1931.

81-1505. (1839.5) Portable sawmill defined. For the purpose of this act a portable sawmill is defined to be any sawmill located upon forest lands within the state of Montana and having a rated capacity of less than five thousand feet per hour of operation.

History: En. Sec. 5, Ch. 124, L. 1931.

81-1506. (1839.6) Penalty for violations. Any person, firm or corporation violating the provisions of this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), which fines are to be credited to the general school funds of the state, and this act shall not be construed to in any manner affect the civil liability of any person in connection with the origin or spread of fire in the forest lands of the state of Montana.

History: En. Sec. 6, Ch. 124, L. 1931. Woods and Forests § 11.
71 C.J. Woods and Forests § 12.

CHAPTER 16

TIMBER SALES—GENERAL PROVISIONS

- Section 81-1601. Sale of timber.
 81-1602. Additional penalty.
 81-1603. Board to defend suits.
 81-1604. State brand—penalty for violation.

81-1601. (1872) Sale of timber. The state board of land commissioners shall have the power to sell timber on state lands, at such price per thousand

feet as in its judgment shall be for the best interest of the state, but not otherwise; but no such sale of live timber shall be made at a less price than three dollars (\$3.00) per thousand feet for white pine, yellow pine and spruce and at a less price than one dollar and a half (\$1.50) per thousand feet for all other timber species. All timber sold or cut from state lands shall be cut and removed under such rules and regulations for the preservation of standing timber and the prevention of fires as the state board of land commissioners shall prescribe; in all cases the board must require the person cutting the timber to pile and burn or otherwise dispose of the brush and slashings in such manner as may be required. Before any sale shall be granted, the timber shall be estimated and appraised under the direction of the state forester, upon the request and subject to the approval of the state board of land commissioners, which estimates and appraisals shall show as nearly as may be the amount and values per thousand feet of all merchantable timber, together with a statement of the situation of the timber relative to risk from fires or damage of any kind, its distance from the nearest lake, stream or railroad, and its value and position as a protection to a watershed.

History: Ap. p. Sec. 3560, p. 193, L. 1897; re-en. Sec. 2213, Rev. C. 1907; amd. Sec. 53, Ch. 147, L. 1909; amd. Sec. 4, Ch. 118, L. 1911; amd. Sec. 1, Ch. 26, L. 1919; re-en. Sec. 1872, R. C. M. 1921; amd. Sec. 1, Ch. 132, L. 1933.

NOTE.—See also sections 81-1404 to 81-1408.

References

State v. American Surety Co. of New York, 78 M 504, 515, 255 P 1063.

Public Lands ⇨ 16.

50 C.J. Public Lands § 34.

81-1602. (1879) Additional penalty. In addition to the penalties provided for in this code against those committing trespass upon any of the lands owned or held in trust, or otherwise, by the state, the state board of land commissioners is hereby authorized and empowered, without legal process, to seize and take, or cause to be seized and taken, any and all lumber, wood, grass, or other property unlawfully severed from the said lands, whether the same has been removed from said lands or not, and may dispose of the same at either public or private sale, in such manner as will be most conducive to the interests of the state, and all moneys arising therefrom, after deducting the reasonable and necessary expenses of such seizure and sale, shall be a part of the permanent fund to which such lands may belong.

History: En. Sec. 7, p. 49, L. 1893; re-en. Sec. 3566, Pol. C. 1895; re-en. Sec. 2219, Rev. C. 1907; amd. Sec. 59, Ch. 147, L. 1909; re-en. Sec. 1879, R. C. M. 1921.

References

State v. American Surety Co. of New York, 78 M 504, 515, 255 P 1063.

Public Lands ⇨ 14.

50 C.J. Public Lands § 33.

81-1603. (1880) Board to defend suits. For the purpose of determining the title to any property seized and taken under the provisions of this act, the state board of land commissioners is hereby authorized and empowered to defend, in the name of the state, any and all actions that may be brought for that purpose, and to do and perform all things necessary to protect the interests of the state.

History: En. Sec. 8, p. 49, L. 1893; re-en. Sec. 3567, Pol. C. 1895; re-en. Sec. 2220, Rev. C. 1907; re-en. Sec. 60, Ch. 147, L. 1909; re-en. Sec. 1880, R. C. M. 1921.

References

State v. American Surety Co. of New York, 78 M 504, 515, 255 P 1063.

81-1604. (1881) State brand—penalty for violation. The state forester, under the direction of the state board of land commissioners, shall select and designate a brand, which he shall place, or cause to be placed, upon all timber, logs, boards, or planks that may be seized, as provided for in this act. Any person or persons, or any officer or employee of any company, association, or corporation, who shall remove, sell, or dispose of any property mentioned in this act, after the same has been seized or marked with the state brand, or who shall erase, deface, cut, or destroy any mark upon any such property, shall, upon conviction, be imprisoned in the state prison for a term of not less than one year nor more than three years, and be subject to a fine of not less than five hundred dollars nor more than five thousand dollars.

History: En. Sec. 9, p. 49, L. 1893; re-en. Sec. 3568, Pol. C. 1895; re-en. Sec. 2221, Rev. C. 1907; amd. Sec. 61, Ch. 147, L. 1909; amd. Sec. 9, Ch. 118, L. 1911; re-en. Sec. 1881, R. C. M. 1921.

References

State v. American Surety Co. of New York, 78 M 504, 515, 255 P 1063.

CHAPTER 17

OIL AND GAS ON STATE LANDS—DISPOSAL OF

- Section 81-1701. State oil and gas leases—reservations—royalty—waste.
 81-1702. Area to be leased—limitations—term of leases—operating agreements.
 81-1703. Rentals—filing fee—contiguity of land leased—cancellation and renewal of leases.
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 81-1719. Provision for off-set wells to be included in lease—reports of operation, production and sale.
 81-1720. State officers not to be interested in leases.
 81-1721. Misconduct of officers in relation to oil or gas leases deemed felony.
 81-1722. False statements relating to oil and gas leases deemed felony.
 81-1723. Effect of unconstitutionality of part of act.
 81-1724. Repealing clause.

81-1701. (1882.1) State oil and gas leases—reservations—royalty—waste. The state board of land commissioners is hereby authorized and empowered to lease in such manner as it may determine, not inconsistent with the enabling act and the constitution, any state lands to which the title has vested in the state and in which the oil and gas rights are not

reserved by the United States, for prospecting and exploring for oil and gas, mining, drilling, developing and removing the same upon the terms and conditions herein prescribed, to any person, association, corporation, domestic or foreign, or municipality qualified under the constitution and the laws of the state of Montana. This power and authority to lease state lands for such purposes shall extend to and include all lands owned by the state under navigable lakes and streams, and shall also extend to and include all those state lands which have been sold but in which the oil and gas rights have been reserved by the state of Montana; but in such cases and in all cases where the lands are under lease for grazing, agriculture or similar purposes, care shall be taken in issuing the oil and gas leases to protect the rights of the purchaser or lessee.

In every oil and gas lease granted pursuant to the terms hereof there shall be reserved unto the state of Montana the right to sell, lease, or otherwise dispose of the surface of the lands covered thereby, subject always to the rights and privileges granted unto the lessee under such oil and gas lease.

In the case of mortgage lands sold by the state on or subsequent to March 14, 1935, or hereafter sold by it, in which the oil and gas rights belong to and are reserved by and for the state, when the state leases such lands for oil and gas purposes, the holder of such lands under certificate of purchase or other contract, or deed from the state, shall be allowed a royalty of six and one-quarter per centum ($6\frac{1}{4}\%$) of the oil and gas produced by such lands, as provided by section 81-902, to be calculated on the same basis as the royalty to be paid to the state as hereinafter provided, and to be paid by the lessee directly to the person or persons entitled thereto, said six and one-quarter per centum ($6\frac{1}{4}\%$) royalty to be deducted from the royalty reserved to the state.

After the date of this act, all such certificate of purchase holders of mortgage lands shall be entitled to one-half ($\frac{1}{2}$) of all oil or gas lease rentals, bonus or penalty thereafter received by the state, and such one-half ($\frac{1}{2}$) of the oil or gas lease rentals, bonus or penalty shall be credited to the certificate of purchase until such certificate of purchase is paid in full, and thereafter such one-half ($\frac{1}{2}$) of the oil or gas rentals collected by the state board of land commissioners shall be paid to the owner.

Oil and gas leases issued under the provisions of this act shall all be subject to the conditions that the lessee in conducting his explorations and mining or drilling operations shall use all reasonable precautions to prevent waste of oil or gas developed in the land or the entrance of water through wells drilled by him to the oil or gas sands or oil or gas bearing strata to the destruction or injury of the oil or gas deposits. Violations of any of these conditions shall constitute grounds for the forfeiture of the lease after hearing had thereon before the state board of land commissioners.

History: En. Sec. 1, Ch. 108, L. 1927;
amd. Sec. 1, Ch. 90, L. 1943; amd. Sec. 1,
Ch. 261, L. 1947.

Mines and Minerals⁵.
40 C.J. Mines and Minerals § 409 et seq.
24 Am. Jur. 558, Gas and Oil, § 53.

81-1702. (1882.2) Area to be leased—limitations—term of leases—operating agreements. (1) No oil or gas lease issued on state lands shall

embrace more than six hundred forty (640) acres, except, however, that any section which as surveyed by the government of the United States contains more than six hundred forty (640) acres may be included under one lease. Any person, association, corporation, or municipality qualified to hold an oil or gas lease on state lands may receive from the state board of land commissioners or take through assignment, or succession, will, judgment, decree, or otherwise through the operation of law, more than one oil and gas lease to state lands, subject, however, to such regulations and limitations as the state board of land commissioners may prescribe, both as to the number of such leases and otherwise.)

(2) All leases issued hereunder shall be granted for a period not exceeding ten (10) years and as long thereafter during the term of twenty (20) years commencing with the date of such lease or leases, as oil or gas of commercial quality and in commercial quantity shall be produced from the land covered thereby; provided, however, (that all drilling, rental and other obligations are fully kept and performed by the lessee.

(3) All holders of state oil and gas leases may enter into agreements with other persons, associations, firms and corporations for drilling and other operations on the state lands under their leases; but no such operating agreements shall in any way be binding upon the state until filed with the secretary of the state board of land commissioners and approved by the board; and no such drilling or operating agreement shall in any way affect the obligations of each individual lease holder to the state.

(4) Nothing contained herein or in prior related acts shall prevent or be so construed as to prevent the state board of land commissioners from entering into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and from modifying existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements and such unit plans of operation; provided, however, that such agreements shall not change the percentage of royalties to be paid to the state from the percentages as fixed in its leases.

(5) The state board of land commissioners is hereby authorized to extend the term of oil and gas leases issued prior to the date when this act takes effect, and where oil or gas of commercial quality and in commercial quantity is produced from the land covered thereby, from a term of fifteen (15) years commencing with the date of such lease or leases to the term of twenty (20) years commencing with the date of such lease or leases. Oil or gas of commercial quality and in commercial quantity produced from any part of a unit in which state lands are included by virtue of a pooling agreement, shall be deemed to be produced from the state lands therein, within the meaning of this provision, and the term of the oil and gas lease or leases covering such lands, and of the pooling agreement covering the same, may be extended as hereinabove provided.

History: En. Sec. 2, Ch. 108, L. 1927; amd. Sec. 1, Ch. 193, L. 1931; amd. Sec. 1, Ch. 171, L. 1933; amd. Sec. 1, Ch. 109, L. 1941; amd. Sec. 1, Ch. 91, L. 1943; amd. Sec. 1, Ch. 128, L. 1945.

Constitutionality

Held, that this act, authorizing pooling agreement covering private and state school lands, is not open to constitutional or other objections; that sec. 11 of the

enabling act has application only where the land as a whole is sold, and not where merely an interest or estate therein is disposed of; and provision in lease as to free use of gas by lessee in development work held not a donation under art. XIII, sec. 1 of the constitution; and in view of nature of natural gas, the state's rights, under a pooling agreement under which state secures its proportionate share of gas brought to surface in unit area, are protected. *Toomey v. State Board of Land Commissioners*, 106 M 547, 550, 559, 563, 81 P 2d 407.

Natural Gas is Ferae Naturae: No Ownership In Situ

The natural gas underlying state and other lands included in a proposed pooling agreement is considered *ferae naturae* and may be reduced to ownership by the party who captures it; it is highly fugitive in character, and a well drilled on either class of lands may drain the gas from that surrounding it; there is no actual ownership of gas in situ. *Toomey v. State Board of Land Commissioners*, 106 M 547, 562, 81 P 2d 407.

Pooling Agreements May Embrace More Than 640 Acres

Held, that while this section provides

81-1703. (1882.3) Rentals—filing fee—contiguity of land leased—cancellation and renewal of leases. The minimum annual money rentals to be paid to the state for oil and gas leases under the provisions of this act shall be seventy-five cents (75c) for each acre of land leased; provided, however, that such rental shall in no case be less than fifty dollars (\$50.00) per annum.

A filing fee of two dollars and fifty cents (\$2.50) for each oil and gas lease issued and a fee in the same amount for each assignment shall be paid to the register of state lands. Such filing fee and the first year's rental shall be paid before the issue of the lease. The rentals for each subsequent year of the lease shall be due and payable thirty (30) days before the beginning of such subsequent year.

The lands shall be leased in as compact bodies as the form and areas of the tracts held by the state and offered for lease will permit. No lease shall embrace non-contiguous sub-divisions of lands unless such sub-divisions shall be within an area comprising not more than one square mile.

In all cases where an oil and gas lease hereafter issued shall be surrendered for cancellation before its expiration, relinquish to the state, or cancelled through proceedings on the part of the state, no new lease on the lands under such lease shall be issued within thirty (30) days from the date of cancellation or relinquishment. (This restriction shall not apply however in case of bona fide assignment.)

History: En. Sec. 3, Ch. 108, L. 1927.

81-1704. (1882.4) Royalty—time for payment—computation. In every oil and gas lease granted by the state there shall be reserved to the state

that no oil or gas lease issued on state lands shall embrace more than 640 acres, in view of provisions in secs. 81-1701 to 81-1724, it is apparent that the legislature realized that such a restriction is inconsistent with the principles of unit operation and therefore excepted such unit agreements from the operation of the restriction as to acreage; but covering entire structure not required. *Toomey v. State Board of Land Commissioners*, 106 M 547, 552, 81 P 2d 407.

Purpose of Pooling Agreements

The purpose of agreements for the pooling of acreage for unit operations for the production of oil or gas is to conserve the natural resources of an oil or gas area, to promote its development in an orderly and economical manner to meet market conditions, to avoid waste and to insure a more equitable distribution of the proceeds of production. *Toomey v. State Board of Land Commissioners*, 106 M 547, 550, 81 P 2d 407.

References

Beck v. Norbeck Company et al., 116 M 345, 347, 151 P 2d 1014 (cited as Ch. 171, laws of 1933).

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as consideration therefor, in addition to the rentals as hereinbefore provided, a royalty in all oil and gas produced and saved from all lands covered thereby, and not used for light, fuel, and operation purposes on the leased premises, which shall be equivalent to the full market value, as ascertained by the state board of land commissioners at the date of such lease, of the estate or interest of the state in the lands and oil and gas deposits disposed of under such lease; provided that such royalty reservation shall not be less than twelve and one-half per cent (12½%) of the whole thereof. Such lease shall provide for the rendering of payment of such royalty in the following manner and upon the following terms:

The lessee shall pay to the state, in cash, for all oil and gas royalty reserved, the posted field price existing on the day such oil or gas is run into any pipe line or storage tank to the credit of the lessee, plus any bonus actually paid, or agreed to be paid, to the lessee, for such oil or gas; or, at the option of the state, exercised in writing by the state board of land commissioners not oftener than every thirty (30) days, the lessee shall deliver the state's royalty oil or gas free of cost or deductions, into the pipe line to which the wells of the lessee may be connected or into any storage designated by the state and connected with such wells.

History: En. Sec. 4, Ch. 108, L. 1927.

81-1705. (1882.5) Report of lessees. On or before the 15th day of each month every holder of an oil or gas lease shall make a report to the register of state lands for the preceding calendar month, which report shall be in such form as the state board of land commissioners may prescribe. Such report shall show the amount of oil or gas produced and saved during such preceding month, the price obtained, the total amount of all sales, and such additional information as may be required and shall be verified by the affidavit of the lessee or some responsible person having knowledge of the facts, and shall be accompanied by payment of the amount due the state as royalty for the month covered by the report.

History: En. Sec. 5, Ch. 108, L. 1927.

81-1706. (1882.6) Work required to hold lease—extension of time—modification of existing leases. In each and every oil and gas lease granted by the state there shall be reserved unto the state board of land commissioners full power and authority to declare termination of the same upon failure of the lessee to drill at least one well upon the leased premises not less than six (6) inches in diameter to the depth of at least one thousand (1,000) feet, unless oil or gas in commercial quantity and of commercial quality shall be encountered at a shallower depth within two years after the date of the lease; provided further, that if oil or gas in commercial quantities is not found at the depth of one thousand (1,000) feet or less, then in that event the lessee shall continue drilling with diligence to such depth as may be necessary to make reasonable test for oil or gas. The board may, in its discretion, upon satisfactory showing by the lessee, extend the time for the commencement or completion of such drilling obligation from year to year, not exceeding ten (10) years from and after the date of the lease, upon such terms and considerations as the board may determine, and upon the payment to the commissioner of state lands and investments of

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such penalty, if any, as the board in its discretion may determine, for each year beginning with the third year, payable each year in advance.

Upon proper application and showing, the state board of land commissioners may in its discretion modify any existing oil and gas lease heretofore issued under the provisions of chapter 108, laws of 1927 (sections 81-1701 to 81-1724), so as to conform with the provisions of this act. Any such modification when granted by the board shall be made in writing.

History: En. Sec. 6, Ch. 108, L. 1927;
amd. Sec. 2, Ch. 171, L. 1933.

81-1707. (1882.7) Rules and regulations may be made by board. The board shall have the power and authority to prescribe such rules and regulations and to do and perform all acts and things not inconsistent with the enabling act, the constitution, and the statutes of this state as it may deem necessary and proper relating to the leasing of state lands for oil and gas exploration and development.

History: En. Sec. 7, Ch. 108, L. 1927. sioners, 106 M 547, 558, 81 P 2d 407; State
ex rel. Handel Oil Co. v. State, ___ M ___,
167 P 2d 844, 846.

References

Toomey v. State Board of Land Commis-

81-1708. (1882.8) Amendment of present leases — ratification. Any holder of an existing oil and gas lease heretofore issued shall have the right to exchange such lease for an amended lease issued under the provisions of this act and embracing the same land. When the holder of any such lease makes written application to the board in due form for such exchange, the board shall issue an amended lease, embracing the same land as the former lease, in the ordinary and regular form duly adopted by the board under the provisions of this act subject to the same royalty reservations unto the state; but there shall be deducted from the term for which such amended lease may be issued, the time that has passed from the date of the issue of the former lease to the date of the issue of the amended lease, and the lessee shall be credited on the amended lease with development work performed on the leased premises under the former lease.

All existing oil and gas leases heretofore executed by the register of state lands on behalf of the state of Montana are hereby ratified, confirmed, and approved, provided, that the holder of any such lease shall, within ninety (90) days from the date this act goes into effect, file in the office of the register of state lands consent in writing to the amendment of such lease to contain a reservation to the state of the right at all times to take and receive its royalties in money or kind in accordance with the provisions of section 81-1704, and failure or refusal of the holder of any such lease to file such consent within such time shall automatically deprive such lessee of all of the benefits conferred by this act.

History: En. Sec. 8, Ch. 108, L. 1927.

81-1709. (1882.9) Bond of lessees. The state board of land commissioners shall require lessees of oil and gas leases and assigns thereof to furnish bonds to the state in form and substance prescribed by law or by regulations of the board and in amount, or amounts, adequate to indemnify the state against loss, damage or detriment by reason of failure of the lessee to fully discharge the obligations contained in any lease or assignment

thereof, including the payment of any money penalties fixed by the board; provided, that no bond in excess of twenty thousand dollars (\$20,000.00) shall be required under any one lease for any one year.

History: En. Sec. 9, Ch. 108, L. 1927.

81-1710. (1882.10) Conditions of lease—hearings concerning default.

All oil and gas leases granted by the state pursuant to the terms of this act shall provide for forfeiture and cancellation thereof upon failure of the lessee to fully discharge the obligations provided therein, after written notice from the state and reasonable time allowed to the lessee for performance of any undertaking or obligation specified in such notice concerning which the lessee is in default. The state board of land commissioners is hereby granted full power and authority to order and hold hearings on any matter or question involving oil and gas leases, under such rules and regulations as it may adopt; and any lessee, upon application therefor, shall be granted a hearing on any notice or demand of the said board before any lease is declared forfeited or cancelled by the board.

History: En. Sec. 10, Ch. 108, L. 1927.

81-1711. (1882.11) Proceeding with diligence required upon completing productive well. The lessee shall be required, upon completing a commercially productive oil or gas well upon the leased premises, to proceed with reasonable diligence to drill such additional wells to the depth of the formation found commercially productive or to such depth as may be necessary to economically test, develop and operate the deposits discovered. No lessee shall, however, be required to drill to completion more than one well under any one lease during any one calendar year, or a total number of wells under any one lease in excess of the total number of forty (40) acre subdivisions of land held under such lease; and, as to lands found valuable for gas production only, the drilling obligation of the lessee shall be confined to a total number of wells equal to the total number of tracts comprising one hundred and sixty (160) acres of land included in the lease; except, as the drilling of off-set oil or gas wells necessary to protect the leased premises and deposits from loss or depletion due to wells drilled on contiguous lands shall require greater diligence in drilling and a greater number of wells to be drilled; provided, that the performance of said well drilling operations may be suspended only by and with the consent of the state board of land commissioners during the time oil or gas previously discovered cannot be marketed at a profit or for other good cause shown.

History: En. Sec. 11, Ch. 108, L. 1927.

81-1712. (1882.12) Disposition of royalties and other moneys. All fees, rentals, penalties, royalties and bonuses collected for or under such leases shall be paid to the register of state lands and by him credited as follows: All fees and penalties shall be credited to the state general fund; all rentals shall be credited to the income fund of the grant to which the lands under each lease belong; all moneys collected as royalties and bonuses shall be credited to the permanent fund arising from the grant to which the land under each particular lease belongs and become and forever remain an inseparable and inviolable part thereof; provided, however, that

all royalties and bonuses collected from the lands forming part of the capitol building grant shall be available as income the same as all other receipts from such lands; and provided further that all moneys received as rentals, royalties and bonuses for or under leases on lands owned by the state of Montana and not held in trust for the public schools of the state or for any state institution shall be credited, one-half to the state general fund and one-half to the state permanent revenue fund as defined by article XXI of the constitution.

History: En. Sec. 12, Ch. 108, L. 1927. . . . 40 C.J. Mines and Minerals § 409 et seq.;
59 C.J. States §§ 3, 7, 8.

Mines and Minerals 5; States 126,
127.

81-1713. (1882.13) Approval of federal act amending enabling act.

The state of Montana, for the purpose of enabling it to take advantage of the powers to it granted by the United States, mentioned in an act of the 67th Congress, No. 48, entitled: "An act to amend an act approved February 22, 1889, entitled: 'An Act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana and Washington to form constitutions and state governments and to be admitted into the Union on an equal footing with the original states, and to make donations of public lands to such State,'" approved August 11th, 1921, hereby accepts said powers as of said date of approval of said amendatory act.

History: En. Sec. 13, Ch. 108, L. 1927. . . . States 9.
59 C.J. States §§ 33-36.

81-1714. (1882.14) Correction of errors and refund of money erroneously paid. The state board of land commissioners is hereby authorized to correct errors of any kind in leases, conveyances or other instruments in writing issued pursuant to the terms hereof and to cause any and all moneys erroneously paid to the state under oil and gas leases, applications therefor, or lands and the products thereof covered thereby, to be refunded to the person or persons entitled thereto from the proper fund.

History: En. Sec. 14, Ch. 108, L. 1927.

81-1715. (1882.15) Advertising for bids on re-lease of producing or gas land. In the case of all leases issued under this act where oil or gas has been produced, the state board of land commissioners shall at the expiration thereof, or termination for any cause, advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction.

In the case of all leases issued under this act where oil or gas has not been produced, the board shall at the expiration thereof, or termination for any cause, advertise the land held thereunder for re-leasing and lease the same to the highest responsible bidder therefor at public auction, if in the judgment of the board such advertising and public auction will result in leasing of the land on terms more advantageous to the state; provided, however, that when the lands are advertised for re-leasing, any person, association, firm or corporation who held such lease at the expiration thereof, whether oil or gas had been produced thereunder or not, shall have the privilege of re-leasing the same at such highest responsible bid

offered therefor, upon such terms and conditions as may be prescribed by the said board or by the legislative assembly; and the board shall have the privilege of rejecting any and all bids.

History: En. Sec. 15, Ch. 108, L. 1927; amd. Sec. 3, Ch. 171, L. 1933.

Operation and Effect

Since this section giving original lessee of mineral interest in state land preferential right to renew does not say when prior lessee shall exercise his right of preference, matter of fixing the time is left open for action by the state board of land commissioners. State ex rel. Handel Oil Co. v. State, ___ M ___, 167 P 2d 844, 846.

Id. Prior lessee of state oil lands lost its preferential right under statute to renewal of lease, where lessee's representatives who were present at bidding on land declined to make any decision as to whether lessee would match highest bid for lease though offered an opportunity to do so, and prior lessee made no effort to renew it until presented to board of land commissioners a personal check in amount of bid of highest bidder at board's meeting eight days later when board accepted highest bidder's bid.

81-1716. (1882.16) Assignments of leases. The assignment of any oil and gas lease issued under the provisions of this act, either in whole or as to subdivisions of land embracing not less than forty acres covered thereby, made to an assignee qualified as provided herein, shall be permitted. Such assignment shall not, however, be binding upon the state until filed in the office of the register of state lands accompanied by the required fees and bond, together with such proof of qualifications (as may be required by the state board of land commissioners,) and approved by said board or its lawful representative; provided, that the approval of any such assignment so filed and supported shall not be withheld in any case where the rights or interest of the state in the property assigned will not in the judgment of the board be prejudiced thereby, and the decision of the board in all cases to be subject to appeal upon proper court proceedings. (All other assignments of oil and gas leases issued under the provisions of this act or interests therein shall be subject to approval by the state board of land commissioners and shall be binding upon the state in the discretion of said board.)

History: En. Sec. 16, Ch. 108, L. 1927.

81-1717. (1882.17) Removal of property of lessee at end of term—agreement with new lessee concerning property. (1) Upon the termination for any cause, of any lease issued pursuant to this act, the former lessee shall have six (6) months after the date of said termination within which to remove all machinery, fixtures, improvements, buildings and equipment belonging to him, upon said premises, except casing in the wells and other equipment or apparatus necessary for the preservation of any oil or gas well or wells; provided, however, that as to such casing, equipment and apparatus, any succeeding lessee, or in the event there be no succeeding lessee, the state of Montana, wishing to have such property left upon the premises, shall pay the reasonable value thereof, in cash, to the former lessee, but if the succeeding lessee or the state of Montana acting through its board of state land commissioners, is unable to agree with the former lessee upon the reasonable cash value of such casing, equipment and apparatus, then the succeeding lessee or the state of Montana, as the case may be, shall pay in cash, to the former lessee therefor, such sum as may be fixed as a reasonable price by a board of three appraisers, one of whom shall be chosen by

the successful bidder, one by the former lessee and the third by the two so chosen, and whose appraisal shall be reported to the respective parties in writing, and thereupon be final and conclusive.

(2) The former lessee may remain in possession and manage the land and property formerly covered by his lease until the value of said casing, equipment and apparatus which such succeeding lessee or the state of Montana itself, desire to have left upon said premises, is fixed, in the manner hereinbefore provided, and shall have been paid to him, in cash, and during such time as such former lessee remains in such possession, he shall be entitled to retain the same share of the products of the premises as inured to him during the term of his lease. Should the state of Montana or other bidder, not desire any of lessee's property, as provided in this paragraph, the lessee shall properly plug all wells and remove all of said property from said lands.

History: En. Sec. 17, Ch. 108, L. 1927.

81-1718. (1882.18) Surrender of lease. The lessee under any oil and gas lease granted by the state shall have the right at the termination of any rental year by giving to the register of state lands 30 days' previous notice in writing, of such intended surrender, to surrender and relinquish such lease to the state in whole or as to any legal subdivision of the lands covered thereby and be thereupon discharged from any obligation not theretofore accrued as to lands so surrendered and relinquished, without prejudice to the continuance of the lease as to lands not surrendered or relinquished. Any lessee holding any oil and gas lease or leases issued prior to the passage of this act shall have the right to surrender any such lease and to accompany any such surrender with an application for a new lease or leases upon all or any portion of the land so surrendered; and, thereupon such application shall have preference over all other applications submitted for the same lands and a lease or leases upon the lands described in such application shall, subject to the terms of this act, be forthwith granted to such former lessee, upon compliance by the lessee with the requirements hereof and the regulations promulgated by the state board of land commissioners.

History: En. Sec. 18, Ch. 108, L. 1927.

81-1719. (1882.19) Provision for off-set wells to be included in lease—reports of operation, production and sale. Oil and gas leases granted by the state shall contain suitable provisions imposing upon all lessees the obligation to drill off-set wells wherever and whenever necessary to prevent waste and damage to the property of the state; also to make such report of operation, production and sales, as well as payments due the state, in the manner, at the time and to such representative of the state as may be required by the state board of land commissioners.

History: En. Sec. 19, Ch. 108, L. 1927.

81-1720. (1882.20) State officers not to be interested in leases. It shall be unlawful for any member of the state board of land commissioners, for any of the officers or employees of the department of state lands and investments, and for any officer or employee of any other department or office of government of the state of Montana which is required to inspect or

examine oil or gas wells or otherwise, to gather field information in regard to prospecting for oil and gas or the production thereof, hereafter to lease or to become interested in any manner in any oil or gas lease on state lands.

History: En. Sec. 20, Ch. 108, L. 1927;
amd. Sec. 4, Ch. 171, L. 1933.

81-1721. (1882.21) **Misconduct of officers in relation to oil or gas leases deemed felony.** Any officer, employee or representative of the state of Montana, who directly or indirectly accepts any money or any other valuable thing, except his regular and lawful compensation, for performing, or not performing an official act under the provisions of this act, or for modifying the performance thereof, shall be guilty of a felony. Any officer, employee, or representative of the state who knowingly and wilfully makes any false classification or appraisal of any state land or interest of the state therein, or of any oil and gas deposits in which the state is interested, or who knowingly and wilfully makes any false report of any such classification or appraisal, shall be guilty of a felony.

History: En. Sec. 21, Ch. 108, L. 1927. 11 C.J.S. Bribery §§ 1, 2; 59 C.J. States § 229 et seq.
Bribery⌚1(1); States⌚81.

81-1722. (1882.22) **False statements relating to oil and gas leases deemed felony.** Any person who shall knowingly make and file in any department, bureau or office of the state of Montana any application, statement, or report in writing required by regulation promulgated pursuant to the provisions of this act containing any false statement of a material fact, shall be guilty of a felony.

History: En. Sec. 22, Ch. 108, L. 1927. 2 C.J.S. Agency § 10; 37 C.J.S. Fraud § 154.
Fraud⌚68.

81-1723. (1882.23) **Effect of unconstitutionality of part of act.** If any subdivision, section or part of section of this act shall be found to be unconstitutional, such finding of unconstitutionality shall not affect the remainder of this act, but such remainder shall be in full force and effect and shall be carried out and the state board of land commissioners is hereby specifically charged with the duty of exercising to their full extent the general grant of powers given to it by the constitution of the state in order to accomplish that purpose.

History: En. Sec. 23, Ch. 108, L. 1927. Statutes⌚64(2).
59 C.J. Statutes § 213 cc.

81-1724. (1882.24) **Repealing clause.** All acts and parts of acts in conflict with any of the provisions of this act are hereby repealed. Provided, however, that nothing herein contained shall be construed to repeal any of the provisions of sections 60-101 through 60-104, or to derogate any of the powers therein granted to, or the duties therein prescribed for, the board of railroad commissioners of the state of Montana.

History: En. Sec. 24, Ch. 108, L. 1927. Statutes⌚157.
59 C.J. Statutes § 507.

CHAPTER 18

HYDRO-ELECTRIC POWER SITES ON STATE LANDS

Section	81-1801.	Power site defined.
	81-1802.	Lease or license of power sites.
	81-1803.	Application for lease or license—action thereon by the board.
	81-1804.	Joint development with the United States.
	81-1805.	Amortization of investment.
	81-1806.	Restrictions and regulations.

81-1801. (1904.1) Power site defined. The words, "power site," as used in this act shall mean not only the state owned land on which the dam is constructed, but also each separate tract of such land which will become part of the reservoir and which in and of itself makes an essential contribution to the value of the power site as a whole of not less than five (5%) per cent of the entire value of such power site.

History: En. Sec. 1, Ch. 123, L. 1931. Electricity \hookrightarrow 1½.
29 C.J.S. Electricity §§ 6-9.

81-1802. (1904.2) Lease or license of power sites. It shall be unlawful to sell or advertise for sale state lands constituting power sites or part of power sites capable of developing hydro-electric energy in commercial quantities; but the state board of land commissioners is hereby granted power and authority to issue lease or license to any person, corporation or municipality for the development of such power sites and the distribution, use and disposition of the electric energy generated thereon, as herein more specifically provided.

History: En. Sec. 2, Ch. 123, L. 1931. 29 C.J.S. Electricity § 4; 50 C.J. Public Lands § 648.
Electricity \hookrightarrow 10; Public Lands \hookrightarrow 158½.

81-1803. (1904.3) Application for lease or license—action thereon by the board. (1) Whenever an application in writing has been presented to the state board of land commissioners for lease or license on a power site on state lands, the board shall make such preliminary examination as to the value of the power site, as to the plans of development submitted by the applicant and of all other matters relating to the proposed development as it deems necessary for the proper disposition of the business. If these preliminary investigations and the offer made for lease or license are such that the board deems further proceedings on the application to be justified, it shall cause notice of the proposed lease or license to be published not less than once each week during not less than six weeks previous to the meeting at which further consideration will be given to the application in two newspapers of general circulation throughout the state, one of such newspapers to be published in the neighborhood of the location of the power site.

(2) At this meeting all other applications which may have been received for lease or license to such power sites shall be duly considered together with the application originally filed. The board shall have the right to reject any or all bids. If, however, the board finds that any of the bids submitted offers to pay adequate rental for such power site, shows to the satisfaction of the board that it is capable of carrying out the proposed development and to render efficient service to the customers that will be served from such power development, and intends in good faith without

any unnecessary delay to proceed with the development, then the board shall accept such bid; provided, however, that if more than one such acceptable bid is received, then the lease or license shall be awarded to the person, corporation or municipality whose offer, considered in its totality, is the most advantageous to the state. In case one of the applicants is a municipality, its bid shall have preference provided that it is in all respects as advantageous to the state as the bid which has been submitted by any person or corporation; provided, however, that the rental to the state must be paid annually or semi-annually and such rental shall not be less than the full market value of the estate or interest disposed of through the granting of the lease or license, such value to be carefully ascertained from all available sources. The term of the lease shall not exceed fifty (50) years.

History: En. Sec. 3, Ch. 123, L. 1931.

81-1804. (1904.4) Joint development with the United States. If the state land constituting such power site is part of a larger power site owned or controlled by the government of the United States, then the board may grant a joint lease or license with the United States for the development of the power site and the distribution, use and disposition of the electric energy generated at such power site under the laws of the United States and regulations issued pursuant thereto, and such lease or license may be granted for a term not exceeding fifty (50) years. The share or percentage of ownership of the state in such joint power site shall be in proportion to the total contribution that the lands of the state make to the value of the entire power site; and before the share of the state in such power site is advertised for lease or license, the percentage of the state's share in the entire power site must be calculated and agreed upon between the state and the United States. The fee or compensation from time to time to be paid to the state under such lease or license shall be calculated on the basis of the state's share of ownership in the entire power site as calculated and agreed to; provided, however, that it shall not be less than the full market value of the estate or interest disposed of in such lands through the granting of the lease or license to be carefully ascertained from all available sources. Before such lease or license is issued, notice thereof must be given in the same manner as herein required for the issuance of a separate lease or license by the state.

History: En. Sec. 4, Ch. 123, L. 1931.

81-1805. (1904.5) Amortization of investment. In all cases where the lease or license issued by the United States requires the amortization of the investment made in dams, machinery, equipment and appurtenant works, such amortization requirement shall also apply to that portion of the investment representing the state's part or share in the power site so that the state will at all times retain its full share of ownership in the power site and in the dams, machinery, equipment and appurtenant works.

If the state lands constitute a separate power site wholly owned by the state and independently developed, the lease or license issued by the state may provide for the amortization of the capital invested in the dam, machinery, equipment and appurtenant works, not including the distribution system, so that ultimately the state will become the owner of the

power site including the dam, machinery, equipment and appurtenant works, not including the distribution system.

History: En. Sec. 5, Ch. 123, L. 1931.

81-1806. (1904.6) Restrictions and regulations. In issuing any lease or license under the provisions of this act, the state board of land commissioners shall have the power and it shall be its duty to incorporate in the lease or license such reasonable restrictions and regulations as it finds necessary in order to protect the interest of the state and its people.

History: En. Sec. 6, Ch. 123, L. 1931.

CHAPTER 19

SATISFACTION OF FARM MORTGAGE LOANS

Section 81-1901. Satisfaction of mortgage and cancellation of notes and obligations.

81-1902. No fees to be charged for certain instruments and services required under act.

81-1901. (1937.) Satisfaction of mortgage and cancellation of notes and obligations. Upon full payment of any mortgage given to secure a loan of any of such funds, it shall be the duty of the register of state lands to cancel said mortgage and the notes or obligations secured thereby, and deliver them to the person paying the same, and he shall also deliver to the person paying the same, a full release and satisfaction of said mortgage, executed by said register of state lands in the name of the state of Montana, which said release and satisfaction shall be recorded in the office of the county recorder of the county wherein said lands are situated.

History: En. Sec. 10, Ch. 124, L. 1917; were those of the common schools and other permanent state educational funds
re-en. Sec. 1937, R. C. M. 1921. loaned under the provisions of the above mentioned chapter.

NOTE.—This section and section 81-1902 must be retained in the code so that mortgages which were written under the provisions of chapter 124, laws of 1917, may be still satisfied even though most of chapter 124 itself has been repealed. The funds above mentioned as "such funds"

Mortgages⇒309(2), 314.

41 C.J. Mortgages §§ 932 et seq., 962 et seq.

81-1902. (1939) No fees to be charged for certain instruments and services required under act. No fees of any kind shall be charged or collected by any county recorder for recording mortgages given to secure loans of such funds, or for recording releases and satisfactions of such mortgages, and no fees of any kind shall be charged or collected by clerks of district courts or by sheriffs for the institution of actions to foreclose such mortgages, or upon sales of lands under such foreclosure proceedings.

History: En. Sec. 12, Ch. 124, L. 1917;
re-en. Sec. 1939, R. C. M. 1921.

Registers of Deeds⇒3.

53 C.J. Registers of Deeds § 34.

NOTE.—See note under section 81-1901.

CHAPTER 20

CAREY LAND ACT BOARD—STATE ENGINEER

Section 81-2001. Creation of board.

81-2002. Successors to state arid land commission.

- 81-2003. Membership of board.
- 81-2004. Expenses of officers.
- 81-2005. Governor as chairman of board—meeting.
- 81-2006. State engineer.
- 81-2007. Duties of state engineer—reports.
- 81-2008. Duties of state engineer.
- 81-2009. State engineer authorized to negotiate with other states regarding interstate waters.
- 81-2010. Same—bond and oath.
- 81-2011. Salary and report of state engineer to board.
- 81-2012. Office at state capital.
- 81-2013. Assistant secretary.
- 81-2014. Salary of assistant secretary.
- 81-2015. State not liable—eight hours labor.
- 81-2016. Carey land act fund.
- 81-2017. Authority of Carey land act board to cancel outstanding bonds.
- 81-2018. Appropriation of water by state.

81-2001. (1949) Creation of board. For the purpose of enabling the state to accept the offer of the United States, made by act of Congress, approved August 18, 1894, entitled, "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other purposes," and as amended by an act of Congress, approved March 3, 1901, for the purpose of reclaiming the lands therein mentioned, in accordance with the terms of said acts, so that the state can obtain title thereto, a board shall be and is hereby created under the name of the Carey land act board, which shall consist of three members, and they and their successors shall remain and continue to be such for all the purposes hereinafter provided.

History: En. Sec. 1, Ch. 114, L. 1903; Waters and Water Courses 222.
 re-en. Sec. 2238, Rev. C. 1907; re-en. Sec. 67 C.J. Waters § 858.
 1949, R. C. M. 1921. 30 Am. Jur. 663, Irrigation, §§ 94 et seq.

81-2002. (1950) Successors to state arid land commission. The Carey land act board shall be successor of the state arid land grant commission, which is hereby abolished, and as such successor shall perform the same duties pertaining to unfinished contracts of said commission as were imposed upon said commission under the law creating said commission, and defining its powers and duties, so far as the same may be necessary to complete such contracts or protect the state's interest.

History: En. Sec. 2, Ch. 114, L. 1903; 1895, sections 3530 to 3547, political code
 re-en. Sec. 2239, Rev. C. 1907; re-en. Sec. 1895. Act amended by senate bill No. 95,
 1950, R. C. M. 1921. pp. 181 to 193, laws of 1897.

NOTE.—The state arid land grant commission was created by act of March 18,

81-2003. (1951) Membership of board. Said Carey land act board shall consist of the governor, secretary of state, and attorney general, none of whom shall receive additional compensation for services on said board.

History: En. Sec. 3, Ch. 114, L. 1903; 1, Ch. 128, L. 1911; re-en. Sec. 1951, R. C.
 re-en. Sec. 2240, Rev. C. 1907; amd. Sec. M. 1921.

81-2004. (1952) Expenses of officers. The traveling expenses necessarily incurred in the performance of his duties as a member of the board, by any member of the board, or by the secretary or assistant secretary of the board, and the necessary office expenses of the board shall be paid by the

state, on sworn statements of account approved by the state board of examiners.

History: En. Sec. 4, Ch. 114, L. 1903; Ch. 128, L. 1911; re-en. Sec. 1952, R. C. M. re-en. Sec. 2241, Rev. C. 1907; amd. Sec. 1, 1921.

81-2005. (1953) Governor as chairman of board—meeting. The governor shall be chairman of the Carey land act board, and shall sign all contracts made by it. Said board shall meet at the office of said board at the state capitol building, at such times as the governor may designate, or when called by him.

History: En. Sec. 5, Ch. 114, L. 1903; Ch. 128, L. 1911; re-en. Sec. 1953, R. C. M. re-en. Sec. 2242, Rev. C. 1907; amd. Sec. 1, 1921.

81-2006. (1954) State engineer. There shall be a state engineer, who shall be appointed by the governor of the state, and confirmed by the senate; he shall hold his office for the term of four years, or until his successor shall have been appointed and shall have qualified; no person shall be appointed to this position who has not such theoretical knowledge and such practical experience and skill as shall fit him for the position.

History: En. Sec. 6, Ch. 114, L. 1903; re-en. Sec. 2243, Rev. C. 1907; re-en. Sec. 1954, R. C. M. 1921.

81-2007. (1955) Duties of state engineer—reports. The state engineer shall:

1. Act as secretary of the Carey land act board, and perform such duties as are imposed upon him by law governing that board, giving special attention to the projects already commenced by the state arid land grant commission.

2. With the approval of the state board of land commissioners, he shall examine, or cause to be examined, tracts of land belonging to the state or to state institutions, and ascertain how much of same it is practicable to irrigate, and report to said land commissioners detailed description of any such lands as can be irrigated, and the probable cost of an irrigation system for same; and, when directed so to do by said commissioners, shall prepare plans and specifications for any such irrigation system.

3. The state engineer shall become conversant with the waterways of the state and the needs of the state as to irrigation matters, shall make, or cause to be made, measurements and calculations of the ordinary and flood discharge of streams, co-operating in this work as much as possible with the United States geological survey and the Montana experiment station; such measurements to be made on streams in order of their importance; provided, that measurements already made, if deemed reliable, may be adopted.

4. The state engineer shall keep in his office full and proper records of his work, observations, and calculations, all of which shall be property of the state.

5. The state engineer shall prepare and render to the governor, biennially, and oftener if required, full and true reports of his work, and such suggestions as to laws and amendments as he deems best.

History: En. Sec. 7, Ch. 114, L. 1903;
re-en. Sec. 2244, Rev. C. 1907; amd. Sec. 1,
Ch. 43, L. 1909; amd. Sec. 1, Ch. 128, L.
1911; re-en. Sec. 1955, R. C. M. 1921.

References

Nemitz v. Reckards et al., 98 M 229,
38 P 2d 980.

81-2008. (1956) Duties of state engineer. It shall be the duty of the state engineer, among other things, to examine all mineral and coal lands, and, under direction of the state board of land commissioners, to make settlement with the lessees of coal lands, and to make examination of any of the lands of the state, when directed by the state board of land commissioners, or by the register of state lands, for the purpose of ascertaining whether the same contain coal or other minerals.

History: En. Sec. 18, Ch. 147, L. 1909;
re-en. Sec. 1956, R. C. M. 1921.

81-2009. (1956.1) State engineer authorized to negotiate with other states regarding interstate waters. The state engineer is hereby authorized and empowered and it is hereby made his duty in addition to the other duties of his office to negotiate with the duly constituted authorities or agencies of other states and of the United States in the preparation of interstate compacts or agreements governing the use, distribution and allocation of the water of any stream or streams flowing from Montana into such other state or states or flowing from such other state or states into Montana. He shall cooperate with such other state or states and with the United States in making the necessary studies and obtaining the data necessary to the preparation of such compacts. Provided that the authority hereby given and the duties hereby imposed are limited to the preparation and proposal of any such compact and no such compact or agreement shall be anywise binding upon the state of Montana until approved by the legislature of Montana and the legislatures of the other state or states involved in such compact.

History: En. Sec. 1, Ch. 27, Ex. L. 1933.

81-2010. (1957) Same — bond and oath. Before entering upon the duties of his office, the state engineer shall take the oath of office, and shall give a bond to the state of Montana in the penal sum of five thousand dollars, conditioned upon the faithful discharge of the duties of his office, and for the delivery to his successor, or other officer appointed by the governor to receive the same, of all moneys, books, and other property belonging to the state, then in his hands or under his control, or with which he may be legally chargeable as such officer.

History: En. Sec. 8, Ch. 114, L. 1903;
re-en. Sec. 2245, Rev. C. 1907; re-en. Sec.
1957, R. C. M. 1921.

81-2011. (1958) Salary and report of state engineer to board. The state engineer shall receive a salary of three thousand dollars per annum, payable monthly. He shall report to the Carey land act board at the end of each fiscal year the time he has spent in connection with Carey land work, and the said board shall reimburse the general fund out of any money available in the Carey fund for the salary of the state engineer for such time as he has spent on Carey land work.

History: En. Sec. 9, Ch. 114, L. 1903; Ch. 118, L. 1913; re-en. Sec. 1958, R. C. M.
re-en. Sec. 2246, Rev. C. 1907; amd. Sec. 1, 1921.

81-2012. (1959) Office at state capital. The state engineer shall keep his office at the state capital, in the capitol building.

History: En. Sec. 10, Ch. 114, L. 1903;
re-en. Sec. 2247, Rev. C. 1907; re-en. Sec.
1959, R. C. M. 1921.

81-2013. (1960) Assistant secretary. Said Carey land act board may, if in its judgment necessary, have and appoint an assistant secretary, who shall keep a proper record of its transactions, keep its accounts, have charge of funds paid to it, of its correspondence and documents, countersign papers and instruments, and perform such duties as the board may require. He shall have authority to administer oaths whenever necessary in the performance of his duties as assistant secretary. He shall give a bond for the faithful performance of his duties in an amount to be fixed by the board.

History: En. Sec. 11, Ch. 114, L. 1903; Ch. 128, L. 1911; re-en. Sec. 1960, R. C. M.
re-en. Sec. 2248, Rev. C. 1907; amd. Sec. 1, 1921.

81-2014. (1961) Salary of assistant secretary. The assistant secretary's salary shall be fixed by the board in proportion to services performed, provided the sum shall not exceed one hundred and fifty dollars per month.

History: En. Sec. 12, Ch. 114, L. 1903; NOTE.—Salary fixed at eighteen hun-
re-en. Sec. 2249, Rev. C. 1907; amd. Sec. 1, dred dollars by chapter 40, laws of 1915.
Ch. 128, L. 1911; re-en. Sec. 1961, R. C. M.
1921.

81-2015. (1962) State not liable—eight hours labor. Nothing in this act shall be construed as authorizing the board to obligate the state to pay for any work constructed under any contract, or to hold the state in any way responsible to settlers for the failure of contractors to complete the work according to the terms of their contracts with the state. In all contracts let under this act, eight hours shall constitute a day's work, and no Mongolian shall be employed thereon.

History: En. Sec. 13, Ch. 114, L. 1903;
re-en. Sec. 2250, Rev. C. 1907; re-en. Sec.
1962, R. C. M. 1921.

81-2016. (1963) Carey land act fund. As provided in the act of Congress, all moneys received by the board from the sale or lease of land selected under the provisions of this act shall be deposited with the state treasurer to the credit of the Carey land act fund.

History: En. Sec. 14, Ch. 114, L. 1903;
re-en. Sec. 2251, Rev. C. 1907; re-en. Sec.
1963, R. C. M. 1921.

81-2017. (1964) Authority of Carey land act board to cancel outstanding bonds. The Carey land act board is hereby authorized and empowered to take all steps necessary to secure cancellation of bonds issued for the reclamation of arid lands under the act of Congress known as the Carey act, and under any acts of the legislative assembly of the state of Montana; to accept bonds in payment for canals, water rights, lands and appurtenances, and execute deeds therefor; to compromise claims, and to make contracts for the reclamation and settlement of said arid lands.

History: En. Sec. 1, Ch. 117, L. 1907;
re-en. Sec. 2252, Rev. C. 1907; re-en. Sec.
1964, R. C. M. 1921.

81-2018. (1965) Appropriation of water by state. The state board of land commissioners is hereby authorized, through the state engineer as its agent, or otherwise, at its discretion, to appropriate any available waters for use upon state lands, and to authorize the construction of irrigation work for said lands. The appropriation shall be made in the same way and under the same laws as those governing the appropriation of water by individuals, and said water right laws are hereby made available and may be applied by said board or its agent.

History: En. Sec. 2, Ch. 85, L. 1905;
re-en. Sec. 2254, Rev. C. 1907; re-en. Sec.
1965, R. C. M. 1921.

CHAPTER 21

RECLAMATION OF ARID LANDS

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|---------|--|-------------|
| Section | 81-2101. Powers of Carey land act board. | |
| | 81-2102. Board to have power to enter into contract for reclamation and settle-
ment of land. | |
| | 81-2103. Power to make rules and regulations. | vol. 5p281 |
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| | 81-2105. Applications to board to reclaim lands. | 81-2130 |
| | 81-2106. State engineer to examine. | (1966-1995 |
| | 81-2107. Approval of requests for contracts. | RCM '35) |
| | 81-2108. Deposits to cover preliminary survey. | 215P(2d)966 |
| | 81-2109. Contracts and bonds. | |
| | 81-2110. Rights of contractor. | |
| | 81-2111. Same. | |
| | 81-2112. Co-operative reclamation projects. | |
| | 81-2113. Default of construction. | |
| | 81-2114. Classification of lands. | |
| | 81-2115. Applications to settle lands reclaimed. | |
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| | 81-2118. Water rights—foreclosure of lien for deferred payments. | |
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| | 81-2120. Board may exercise right of eminent domain. | |
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| | 81-2123. Board may permit limited settlements. | |
| | 81-2124. Disposition of proceeds of sale or lease of lands. | |
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| | 81-2126. Board shall issue biennial reports. | |
| | 81-2127. Sale of irrigable state land in farm units. | |
| | 81-2128. Withdrawal of lands embraced within irrigation project. | |
| | 81-2129. Sale of withdrawn lands at public auction. | |
| | 81-2130. Lease of withdrawn lands. | |

81-2101. (1966) Powers of Carey land act board. The Carey land act board shall have and it is hereby granted full power and authority to take all steps necessary to comply with all and singular the conditions of an act of Congress approved August 18, 1894, entitled, "An act making appropriations for sundry civil expenses of the government for the fiscal year ending June 30, 1895, and for other expenses," and all acts amendatory thereto now in force or which may hereafter be enacted providing for the reclamation of desert lands by state within whose borders the same may lie, and acts pertaining thereto, to the end that the state may receive the full benefit and advantage accruing to it from the same. Said board shall have, and it is hereby given full power to prepare and file any map

or maps of any land or lands proposed to be irrigated and reclaimed, which shall exhibit the plan showing the mode of contemplated irrigation and reclamation, and to enter into contracts on behalf of the state with the United States for the reclamation and irrigation of such lands; provided, that said board shall have no power, by any such contract, to create any indebtedness against the state, or to obligate the state to pay to the United States or to any one anything on account of such lands.

History: En. Sec. 1, Ch. 105, L. 1905;
re-en. Sec. 2255, Rev. C. 1907; re-en. Sec.
1966, R. C. M. 1921.

References

Valier-Montana Land & Water Co. v.
Ries, 109 M 508, 513, 97 P 2d 584.

Waters and Water Courses—222.

67 C.J. Waters § 858.

30 Am. Jur. 663, Irrigation, §§ 94 et seq.
Right of owner of land within reclama-
tion project in respect of which a water
right was allowed upon application pur-
suant to Reclamation Act to a perpetual
right beyond the control of the Federal
government for a sufficient amount bene-
ficially to irrigate the land. 115 ALR 1320.

**81-2102. (1967) Board to have power to enter into contract for reclama-
tion and settlement of land.** The said board shall have, in the manner herein-
after provided, authority to enter into contracts for the reclamation and
irrigation of any such lands, in respect to which contract may be or may
have been entered into between the state and the United States, and for
placing settlers thereon, and any and all contracts heretofore entered into by
said board for the reclamation, irrigation, and settlement of any lands, for
the reclamation and irrigation of which the state has heretofore entered into
contracts with the United States, are hereby ratified and confirmed; pro-
vided, however, that nothing in this act shall be construed as authorizing
the board to obligate the state to pay for any work constructed under any
contract, or to hold the state in any way responsible to settlers for failure
of contractors to complete the work according to the terms of their con-
tract with the state.

History: En. Sec. 2, Ch. 105, L. 1905;
re-en. Sec. 2256, Rev. C. 1907; re-en. Sec.
1967, R. C. M. 1921.

81-2103. (1968) Power to make rules and regulations. Said board shall
have power to make such rules and regulations for the conduct of its busi-
ness as may be necessary, which do not conflict with the acts of congress
relating to Carey land or laws of Montana.

History: En. Sec. 3, Ch. 105, L. 1905;
re-en. Sec. 2257, Rev. C. 1907; re-en. Sec.
1968, R. C. M. 1921.

81-2104. (1969) Members of board not to be interested in contract.
No member of the board or any employee thereof shall in any way be
financially interested in any contract or work contemplated by this act.

History: En. Sec. 4, Ch. 105, L. 1905;
re-en. Sec. 2258, Rev. C. 1907; re-en. Sec.
1969, R. C. M. 1921.

81-2105. (1970) Applications to board to reclaim lands. Any person or
persons, company, association, or corporation, constructing, having con-
structed, or desiring to construct ditches, canals, or other irrigation works
to reclaim land under the provisions of this act, may file with the board a

request for the selection, on behalf of the state by the board, of the land to be reclaimed, describing said land by the government survey. This request shall be accompanied by a proposal to construct the ditch, canal, or other irrigation works necessary for the reclamation of the land asked to be selected, and to put settlers on the same. The proposal shall be prepared in accordance with the rules of the board, and with the regulations of the department of the interior. It shall state the source of an available and adequate water supply, the location and dimensions of the proposed works, the estimated cost thereof, and that perpetual water rights inseparable from the land reclaimed and to embrace a proportionate interest in the canal or other irrigation works will be sold or leased to settlers on the land to be reclaimed, and be accompanied by a map of the lands to be reclaimed, and the route of the ditches or canals to be constructed.

History: En. Sec. 5, Ch. 105, L. 1905;
re-en. Sec. 2259, Rev. C. 1907; re-en. Sec.
1970, R. C. M. 1921.

81-2106. (1971) State engineer to examine. Whenever the state engineer shall in his judgment, from an examination of the maps and field notes submitted for his examination, be unable to determine whether or not the proposed irrigation works are feasible and adequate, whether or not the proposed cost of construction is reasonable, and whether or not the lands proposed to be irrigated are of such character as to come under the provisions of the aforesaid acts of Congress, the board may direct the engineer to make, or cause to be made by some qualified assistant, such survey or examination as will enable him to report intelligently thereon to the board.

History: En. Sec. 6, Ch. 105, L. 1905;
re-en. Sec. 2260, Rev. C. 1907; re-en. Sec.
1971, R. C. M. 1921.

81-2107. (1972) Approval of requests for contracts. If such request shall be approved by the board, it shall forthwith cause reservation of such lands to be made, and enter into appropriate contract with the United States, subject to the limitations by this act prescribed for the reclamation of the same. When requests or proposals are not approved by the board, the board shall notify the parties making such proposal of such action and the reason therefor. The parties so notified shall have sixty days in which to submit a satisfactory proposal, but the board may at its discretion extend the time to six months.

History: En. Sec. 7, Ch. 105, L. 1905;
re-en. Sec. 2261, Rev. C. 1907; re-en. Sec.
1972, R. C. M. 1921.

81-2108. (1973) Deposits to cover preliminary survey. Any person wishing to reclaim land under this act may apply to the board for a reconnaissance, or a preliminary survey, and the board shall require from such applicant a deposit of such an amount as in its judgment will defray the expense thereof, and cause such survey to be made by the state engineer; and thereafter the unused part of such deposit, if any, shall be returned to such person. Persons at whose instance such reservations are made shall pay all land office fees and furnish necessary maps; provided, that the pro-

visions of this section shall not apply to co-operative projects described in section 81-2112.

History: En. Sec. 8, Ch. 105, L. 1905;
re-en. Sec. 2262, Rev. C. 1907; re-en. Sec.
1973, R. C. M. 1921.

81-2109. (1974) Contracts and bonds. Upon contracting with the United States for the reclamation of such lands, it shall be the duty of the board immediately to enter into a contract with the parties submitting the proposal in accordance therewith, which contract shall contain complete specifications of the location, dimensions, character, and estimated cost of the proposed ditch, canal, or other irrigation works, the date or dates when the contractor will put settlers on the reclaimed land, and the price and terms upon which the state is to sell or lease the land to the settlers. The proposed contractor shall execute a bond in such an amount and with such sureties as the board shall require, to be conditioned upon the faithful performance of the contract with the state, and in case he shall fail, within sixty days after being notified by the board that it has contracted with the United States for the reclamation of the said lands and is ready to enter into a contract with him in accordance with his proposal, or if he shall fail within such time to execute such bond, the said board may enter into similar contract with any other person, exacting a like bond. No contract shall be made by the board which requires a greater time than five years for the construction of the works, and all contracts shall state that the work shall begin within one year from the date of contract, and thereafter to be prosecuted diligently to completion.

History: En. Sec. 9, Ch. 105, L. 1905;
re-en. Sec. 2263, Rev. C. 1907; re-en. Sec.
1974, R. C. M. 1921.

30 Am. Jur. 663, Irrigation, §§ 94 et seq.
Priority as between contract holders
under a Carey Act project. 26 ALR 296.

81-2110. (1975) Rights of contractor. The builder of any such canal or other irrigation works shall have the right to so construct or to subsequently enlarge or make such changes in the same as will permit the water to be used for power purposes, and to use any surplus water carried therein for such purpose; such construction, enlargement, change, or use to be done without cost to or interference with any purchaser or owner of perpetual water right from such canal. All income from the use of such water for power shall belong to said builder, his heirs, or assigns; but the use for power development shall be subordinate to the irrigation and domestic use of the water, and shall not interfere in any way with perpetual rights.

History: En. Sec. 10, Ch. 105, L. 1905;
re-en. Sec. 2264, Rev. C. 1907; re-en. Sec.
1975, R. C. M. 1921.

81-2111. (1976) Same. Any person or company entering into a contract to construct canals or other irrigation works, and to sell water rights to settlers under this act, may maintain and operate the same until perpetual water rights appurtenant to ninety per cent. of the lands, to reclaim which such works were constructed, have been sold and paid for, when such works shall be turned over to the settlers and others owning rights to take water from such canals, who shall have the right thereafter to maintain and operate it. The contractor, so long as he maintains and operates the irrigation works, shall have the right to collect from settlers on such lands

not to exceed one dollar per acre, per year, for each acre of land to which his or her water right is appurtenant, said charge to include the cost of maintenance, operation, and delivery of water to said land.

History: En. Sec. 11, Ch. 105, L. 1905;
re-en. Sec. 2265, Rev. C. 1907; re-en. Sec.
1976, R. C. M. 1921.

81-2112. (1977) Co-operative reclamation projects. (1) It shall be the duty of the Carey land act board to aid co-operative reclamation projects as follows: Parties desiring such aid shall incorporate as a co-operative irrigation association for the purpose of reclamation by their own labor of arid lands open to reservation under the said acts of Congress, and of the settlement upon said lands. Each member shall subscribe to one share of the stock for each forty-acre tract of land to be filed upon and reclaimed by him, and the total number of shares issued by such association shall be limited to one for each forty acres of land filed upon. After the articles of incorporation are filed with the secretary of state, the fee for which shall be five dollars, the association may apply to the Carey land act board for aid, and it shall be the duty of the state engineer or his assistant, under such rules and regulations as the board may adopt, to investigate the proposed project, and, if found feasible, to prepare the maps and data required for reserving the land under the Carey act, and subsequently to furnish the association with the engineering plans necessary for reclamation, and to exercise a general supervisory control over their execution. Thereupon the said board shall, if in the judgment of the state engineer the reclamation of such land is feasible and practicable, cause the same to be reserved, and contract with the United States, subject to the same limitations as hereinbefore provided, for the reclamation of the same.

(2) The association shall pay the United States land office fees for the reservation of the lands, and immediately after contract shall have been entered into with the United States shall pay to the Carey land act board twenty-five cents per acre filing fee for each acre reserved. When all or any part of said land has been reclaimed, the board shall apply for patent for same; provided, that all cash outlay required for obtaining patent shall be paid to the board by the association immediately. After water has been available for irrigation of said lands for four seasons, the association shall, not later than November 1st of said fourth season, pay to the Carey land act board such additional amount, not exceeding one dollar per acre, as may have been agreed upon between said board and such association before the reservation was made, for all said land patented to the state, and thereupon deeds shall be issued by the state to each of the stockholders of said association having settled upon any of said lands, for so many acres as their stock may entitle them to respectively. After the state has obtained patent, it may issue deeds at any time when the land is paid for, in tracts of not less than forty acres nor more than one hundred and sixty acres to any stockholder designated by the association, being a settler upon any of said lands. Water rights for said lands shall be appurtenant to and inseparable from the legal subdivision for which it was appropriated.

History: En. Sec. 12, Ch. 105, L. 1905;
re-en. Sec. 2266, Rev. C. 1907; re-en. Sec.
1977, R. C. M. 1921.

81-2113. (1978) Default of construction. Upon the failure of any parties having contracts with the state for the construction of irrigation works to begin the same within the time specified by the contract, or to complete the same within the time or in accordance with the specifications of the contract with the state, or on a cessation of work under the contract for a period of six months after the second year, it shall be the duty of the board to give such parties written notice of such failure, and if, after a period of sixty days from the receipt of such notice, they shall have failed to proceed with the work, or to conform to the specifications of their contract with the state, the penal bond securing performance of such contract shall at once be declared forfeited to the state, and the contract, in so far as it relates to any of said land not settled or reclaimed, shall immediately thereafter be void. On the application of the said board the attorney general shall be required to institute or defend any suits or actions in which may, in any manner, be brought in question the rights of the state in any lands in which the state has acquired any interest under any of the said acts of Congress, and the said board is hereby authorized and empowered, in the name of the state, to execute any conveyances of any property, the title to which is in the name of the state by reason of any acts of the said board or its predecessor, the arid land grant commission, a conveyance of which is necessary to or made a condition of the relief asked for by the state in any such action.

History: En. Sec. 13, Ch. 105, L. 1905;
re-en. Sec. 2267, Rev. C. 1907; re-en. Sec.
1978, R. C. M. 1921.

81-2114. (1979) Classification of lands. The board shall cause to be classified all lands reserved under this act, the expenses for which shall be paid by the state out of the funds in the Carey land act fund, if any; if none, then out of funds not otherwise appropriated, upon vouchers duly approved by the board. The board shall sell or lease any or all of the lands acquired by the state under provisions of this act, in quantity not to exceed one hundred and sixty acres to one individual, the price and terms of such sale or lease to be fixed by the board according to said classification; provided, the selling price be not less than fifty cents per acre nor more than two dollars and fifty cents per acre.

History: En. Sec. 14, Ch. 105, L. 1905;
re-en. Sec. 2268, Rev. C. 1907; re-en. Sec.
1979, R. C. M. 1921.

81-2115

(1980

RCM '35)

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81-2115. (1980) Applications to settle lands reclaimed. Any citizen of the United States, or any person having declared his intention to become a citizen of the United States, over the age of twenty-one years, may make application, under oath, to the board, to enter any of said land at any time after the same has been classified, in any amount not to exceed one hundred and sixty acres for any one person; and such application shall set forth that the person desiring to make such entry does so for the purpose of settlement in accordance with the act of Congress and the laws of this state relating thereto, and that the applicant has never received the benefit of the provisions of this act to an amount greater than one hundred and sixty acres, including the number of acres specified in the application under con-

sideration. Such application must be accompanied by a certified copy of a contract for a perpetual water right, made and entered into by the party making application with the person, company, or association who has been authorized by the board to furnish water for the reclamation of said lands; and if said applicant has at any previous time entered land under the provisions of this act, he shall so state in his application, together with description, date of entry, and location of said land. The board shall thereupon file in its office the application and papers relating thereto, and, if allowed, issue a certificate of location to the applicant. All applications of entry shall be accompanied by a payment of twenty-five cents per acre, which shall be paid as partial payment on the land if the application is allowed; and all certificates when issued shall be recorded in a book to be kept for that purpose. If the application is not allowed, the twenty-five cents per acre accompanying it shall be returned to applicant; provided, that where the construction company fails to furnish water to any settler under the provisions of its contract with the state, the state shall refund to such settler all payments that he shall have made to the state.

History: En. Sec. 15, Ch. 105, L. 1905;
 re-en. Sec. 2269, Rev. C. 1907; re-en. Sec.
 1980, R. C. M. 1921.

81-2116. (1981) Execution of deeds. After the state has received a patent for any such land reclaimed, and a purchaser has paid in full for any part of it, said board shall, in the name of the state, execute and deliver to him a deed for the same.

History: En. Sec. 17, Ch. 105, L. 1905;
 re-en. Sec. 2271, Rev. C. 1907; re-en. Sec.
 1981, R. C. M. 1921.

81-2117. (1982) Failure of claimants to comply with contract. If any claimant having filed on any such land shall fail, for a period of one year after water is available for his land, and after notice thereof is given to him by said board, by letter mailed to the postoffice nearest such land, to make payment of any sums remaining due on account of the purchase price for such land, then, after notice shall have been published once a week for four successive weeks in a newspaper of general circulation in the county where the land is located, his or her rights to any and all such land and any water right appurtenant to the same, and all payments made, shall be forfeited.

History: En. Sec. 18, Ch. 105, L. 1905;
 re-en. Sec. 2272, Rev. C. 1907; re-en. Sec.
 1982, R. C. M. 1921.

81-2118. (1983) Water rights—foreclosure of lien for deferred payments. (1) The water rights to all lands acquired under the provisions of this act shall attach to and become appurtenant to the land as soon as title passes from the United States to the state. Any person, company, or association furnishing water for any tract of land shall have a first and prior lien on said water right and land upon which said water is used for all deferred payments for said water rights; said lien to be in all respects prior to any and all other liens created or attempted to be created by the owner or

81-2118
 Amended
 L. '51, c. 62
 Sec. 1, p. 110

possessor of said lands. Upon default in any of the deferred payments secured by any lien under the provisions of this act, the person, company of persons, association, or incorporated company holding or owning said lien may foreclose the same in the same manner as mortgages of real property are foreclosed. All sales shall be advertised in a newspaper of general circulation, published in the county where said land or some part thereof is situate, for six consecutive weeks, and the same shall be sold to the highest bidder at the front door of the court-house of the county, or such place as may be agreed upon by the terms of the aforesaid contract. The sheriff of said county shall in all such cases give all notices of sale, and shall sell all such land and water rights, and shall make and execute a certificate of sale to the purchaser thereof, and at such sale no person, company of persons, association, or incorporated company owning and holding any lien shall bid in or purchase any land or water right at a greater price than the amount due on deferred payment for said water right and land, and the cost incurred in making the sale of said land and water right. At any time within twelve months after the foreclosure sale by the sheriff of the land and water right as aforesaid, the original owner against whom the lien has been foreclosed may apply to the person, company of persons, association, or incorporated company purchasing at such sale, to redeem said land and water rights, and the purchaser shall assign the certificate of sale to such land and water rights to such original owner upon the payment by him within such twelve months of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest at ten per cent. per annum, costs, and charges thereon.

(2) When the lien holder becomes the purchaser at such foreclosure sale, and such lands and water rights are not redeemed by the original owner within twelve months, then at any time within three months thereafter any person desiring to settle and use such lands and water rights may apply to the purchaser at such foreclosure sale to redeem such land and water rights, and such purchaser shall assign the certificate of sale of such land and water rights to the person desiring to redeem the same, upon the payment by him of the amount of the lien for which the same was sold at such foreclosure sale, together with the interest, costs, and charges thereon.

(3) Upon issuing any certificate of sale, it shall be the duty of the sheriff to file for record in the office of the county clerk of the county where such land is situated, a certified copy of such certificate of sale assigned to him by the purchaser as aforesaid, upon his redemption of such land and water rights. In case the land and water rights shall be redeemed by any person other than the original owner, the sheriff shall, upon presentation of such certificate, issue a deed for such land and water rights to the person redeeming the same. If the land and water rights shall not be redeemed by any person within the time and in the manner hereinbefore provided, it shall be the duty of the sheriff, upon presentation of certificate of sale by the original purchaser to issue a deed to such purchaser.

(4) Where such land and water rights are not purchased by the lien holder at such foreclosure sale, it shall be the duty of the sheriff to first pay the lien holder out of the proceeds of such sale the amount of the lien, together with all interest, costs, and charges thereon, and to pay any balance

remaining to the person against whom such lien has been foreclosed, and for his services in such cases the sheriff shall receive the same fees as are provided by law in civil cases. Under no circumstances shall a lien be foreclosed against land belonging to the state and not filed on by an individual. In case the claimant whose rights to any such land and water shall have been divested by any deed issued, as in this section provided, shall not have paid to the state sums due or to become due to it on account of such land, any person desiring to settle upon the same shall acquire the right so to do upon payment to the grantee under such sheriff's deed of the amount which would have effected a redemption at the time, with ten per cent. additional; provided, that the holder under the deed shall have the right to remove any crops which may be growing upon such land at the time such intending settler offers to pay such sum.

History: En. Sec. 19, Ch. 105, L. 1905; re-en. Sec. 2273, Rev. C. 1907; re-en. Sec. 1983, R. C. M. 1921.

Payment of Installment on Water Stock Contract Tolls Statute of Limitations

In an action to recover balance due on contract for the purchase of water stock and to foreclose mortgages on land securing contracts, where company constructed its water distribution system under contract with the Carey land act board, payment of an installment of the purchase price made eight years before suit and credited first to interest on the entire unpaid balance, prevented the eight-year statute of limitations from running against any of the installments remaining unpaid. *Valier-Montana Land & Water Co. v. Ries*, 109 M 508, 517, 97 P 2d 534.

Rights of Sheriff's Sale Purchaser Subordinate to Lien of Irrigation Company

Where one by sheriff's deed became a successor in interest of a purchaser of a water right and the land upon which the water was used, acquired under the provisions of this act, his rights were subordinate to the lien of the irrigation company, and a finding to that effect was warranted, and consistent with the facts pleaded by the holder of the sheriff's deed as to the manner in which his interest was acquired. *Valier-Montana Land & Water Co. v. Ries*, 109 M 508, 518, 97 P 2d 584.

30 Am. Jur., Irrigation, p. 670, § 108; p. 673, §§ 113, 114.

81-2119. (1984) Rights-of-way. The map in the office of the board of the lands selected under the provisions of this act shall show the location of the canals or other irrigation works approved in contract with the board, and all lands filed upon shall be subject to the right-of-way of such canals or irrigation works; said right-of-way to embrace the entire width of the canal and such additional width as may be required for its proper construction, operation, and maintenance, the width of the right-of-way to be specified in the contracts provided for in this act.

History: En. Sec. 20, Ch. 105, L. 1905; re-en. Sec. 2274, Rev. C. 1907; re-en. Sec. 1984, R. C. M. 1921.

30 Am. Jur. 670, Irrigation, § 107.

81-2120. (1985) Board may exercise right of eminent domain. The right of eminent domain may be exercised in the manner prescribed by Title 93 by any person, association, or corporation, foreign or domestic, entering into any contract with the said board to reclaim any lands in order to condemn any property subject to condemnation as therein provided, for right of way the construction of which may be provided for by any such contract, or for the erection or construction of any works to be used in connection therewith.

History: En. Sec. 21, Ch. 105, L. 1905;
re-en. Sec. 2275, Rev. C. 1907; re-en. Sec.
1985, R. C. M. 1921.

Eminent Domain 29.
29 C.J.S. Eminent Domain § 30.
18 Am. Jur. 621, Eminent Domain, gen-
erally.

81-2121. (1986) Right of board to appropriate water. The said board, or any person, association, or corporation contracting with it for the reclamation of any such lands, shall have the right to appropriate any unappropriated waters of the state necessary to the carrying out of any contracts entered into by them, or either of them, in relation to the same, in the same manner as appropriations are required to be made in behalf of individuals.

History: En. Sec. 22, Ch. 105, L. 1905;
re-en. Sec. 2276, Rev. C. 1907; re-en. Sec.
1986, R. C. M. 1921.

Waters and Water Courses 132.
67 C.J. Waters § 858.

81-2122. (1987) Seal—fees. The board shall prescribe the duties of all its employees, shall use a seal, and shall collect the following fees: For filing each application, one dollar; for filing each final proof, one dollar; for issuing each patent, one dollar; for making certified copies of records or papers, the same fees as provided to be charged by the secretary of state for like services. The money collected for fees shall be paid to the state treasurer on the last day of each month, and by him credited to the Carey land act fund. The filing fees, when paid for land reserved but not patented to the state, shall be kept in a separate fund, called Carey land filing fund, and can be paid out only for refunds in the event that the land is not reclaimed within the contract period; said refund to be made upon orders from the board to the state auditor, specifying the lands filed on and by whom; but after any of these lands are patented, the filing fees paid for the same shall be transferred from the said fund to the Carey land act fund, upon an order from the board to the state auditor specifying the legal subdivisions of land and total acreage.

History: En. Sec. 23, Ch. 105, L. 1905;
re-en. Sec. 2277, Rev. C. 1907; re-en. Sec.
1987, R. C. M. 1921.

81-2123. (1988) Board may permit limited settlements. For the purpose of expediting the settlement of any lands for the reclamation of which the said board may make contracts, it may, on such terms as may by the said board be prescribed by rule or contract, permit any such lands to be improved and occupied and cultivated for limited periods; provided, however, that such occupancy shall not preclude any person desiring to settle upon such lands from doing so at any time.

History: En. Sec. 24, Ch. 105, L. 1905;
re-en. Sec. 2278, Rev. C. 1907; re-en. Sec.
1988, R. C. M. 1921.

81-2124. (1989) Disposition of proceeds of sale or lease of lands. All moneys received by the board from the sale or lease of lands reclaimed under the provisions of this act shall be deposited upon the last day of each month with the state treasurer to the credit of the Carey land act fund, and such sums as may be necessary shall be used:

1. For the payment of the current expenses of the board and of the state engineer's office hereafter incurred in carrying out the provisions of

this act, said engineer's expenses to include a charge for actual cost of time devoted to board matters.

2. To reimburse the state general fund for expenses of the board, two thousand dollars, and of the state engineer two thousand dollars, heretofore incurred and paid out of the general fund.

3. To reimburse the state for expenses of the state arid land grant commission, five thousand seven hundred and seven dollars and sixty-five cents, heretofore paid out of the general fund; provided, that the reimbursements thus made shall be paid into the state engineer's expense fund, which is hereby created, and shall be used under the direction of the state board of land commissioners and the state engineer in carrying out the provisions of paragraphs 2, 3, and 4 of section 81-2007. Claims against said expense fund shall be passed upon and paid in same manner as other claims against state funds.

4. After paying the current expenses and reimbursements above designated, if there be a balance in said fund, there shall be estimated by the board the sum that in its judgment will suffice for its next two years expenses, and whenever the remainder in said fund, less said estimate shall equal two thousand dollars, the same shall be applied pro rata to the payment of warrants issued by the state arid land grant commission for expenses incurred by it against districts Nos. 1, 2, and 4, and open accounts which are credited on the ledger of said commission to sundry persons for supplies furnished, the aggregate of said warrants and accounts being, without interest, eighteen thousand six hundred ninety-seven dollars and forty-five cents; and any balance remaining shall constitute a trust fund in the hands of the state treasurer, the same to be used only for the reclamation of other arid lands.

History: En. Sec. 25, Ch. 105, L. 1905;
 re-en. Sec. 2279, Rev. C. 1907; re-en. Sec.
 1989, R. C. M. 1921.

81-2125. (1990) Expenses. That the expenses actually incurred in connection with each district or project to be reclaimed under this act may be determined, it shall be the duty of the state engineer to report to the board his expenses and the time he spends in connection with each. The office and clerical expenses of the board shall be by it apportioned at the end of each fiscal year among various districts and projects, and correct charges of these and the engineer's salary and expenses made against the different districts and projects.

History: En. Sec. 26, Ch. 105, L. 1905;
 re-en. Sec. 2280, Rev. C. 1907; re-en. Sec.
 1990, R. C. M. 1921.

81-2126. (1991) Board shall issue biennial reports. The board shall issue a biennial report showing the status of various districts and projects, the receipts and expenses, lands reclaimed and patented to the state, if any, and other results of its work. If requested by the governor, a report shall be made at any time.

History: En. Sec. 27, Ch. 105, L. 1905;
 re-en. Sec. 2281, Rev. C. 1907; re-en. Sec.
 1991, R. C. M. 1921.

81-2127. (1992) Sale of irrigable state land in farm units. In order to assist in the reclamation and settlement of arid lands in this state, and for the purpose of co-operating with and aiding in the construction of works for the irrigation and reclamation of arid lands, all lands now or hereafter owned by the state and designated as irrigable lands under any existing or proposed irrigation system in Montana shall be disposed of in farm units and at public sale.

History: En. Sec. 1, Ch. 123, L. 1911;
re-en. Sec. 1992, R. C. M. 1921.

81-2128. (1993) Withdrawal of lands embraced within irrigation project. Any irrigation company or association now operating in this state, or which shall hereafter propose to operate for the reclamation of arid lands, shall file with the state board of land commissioners a petition asking that an order be made and entered, withdrawing from sale all irrigable state lands embraced within the irrigation project until the completion of the irrigation system whereby such state land may be reclaimed.

There shall be filed, accompanying said petition, a plat showing the location of the lands owned by the state with reference to the proposed or existing irrigation system, and satisfactory evidence must be submitted to the board showing the ability of the corporation, association, person or persons to complete the irrigation system, and provide a sufficient supply of water to reclaim the state lands embraced in the project, and also showing that the state lands are so located that they can be properly irrigated from such irrigation system.

After investigating the subject, if the board of land commissioners be satisfied that lands owned by the state will be benefited, and that the withdrawal of same from sale until the completion of any irrigation project will benefit and assist such project, it shall make and enter an order withdrawing such lands from sale in accordance with the terms of this act.

Such order may thereafter be revoked by said board if, in its judgment and discretion, the continuance of the withdrawal of such lands is not of benefit to the state, the public, or aidful to the irrigation project.

History: En. Sec. 2, Ch. 123, L. 1911; Public Lands 158½; Waters and Water Courses 232.
re-en. Sec. 1993, R. C. M. 1921. 50 C.J. Public Lands § 648; 67 C.J. Waters § 858.

81-2129. (1994) Sale of withdrawn lands at public auction. At any time after such withdrawal, the state board of land commissioners shall, upon the application of the said corporation, association, person or persons having such withdrawal made, offer the said lands or the part thereof covered by such application for sale at public auction, in such tracts or parcels as may be designated in such application, not exceeding 160 acres to one person, corporation, or association.

History: En. Sec. 3, Ch. 123, L. 1911;
re-en. Sec. 1994, R. C. M. 1921.

81-2130. (1995) Lease of withdrawn lands. After withdrawal of any state lands from sale under the terms of this act, the state board of land

commissioners may, if it deems it to the best interests of the state, lease said lands or any part or portion thereof.

History: En. Sec. 4, Ch. 123, L. 1911;
re-en. Sec. 1995, R. C. M. 1921.

CHAPTER 22

EXCHANGE OF TIMBERED, CUT OR BURNED OVER LANDS

- Section 81-2201. Exchange of timbered, cut over or burnt over lands.
81-2202. Forester to investigate.
81-2203. Investigation and findings concerning exchange of land.
81-2204. Hearing concerning exchange—notice—final order.
81-2205. Rules and regulations may be made by state board.
81-2206. Federal approval required.

81-2201. (1995.1) Exchange of timbered, cut over or burnt over lands. That the state board of land commissioners of the state of Montana is hereby authorized to accept on behalf of the state of Montana title in fee simple to any lands, timbered or from which the timber has been cut or burned, and in exchange therefor may convey not to exceed an equal value of similar land owned by the state of Montana; provided, however, that no such exchange shall be made except that which in the opinion of the state board of land commissioners of the state of Montana will benefit the public interest. That for the purpose of such exchange, all lands now owned by the state, including those referred to in section 81-1401 and section 81-903, are subject to be offered for such exchange, and any restrictions against their sale or disposal are for the purpose of such exchange hereby released.

History: En. Sec. 1, Ch. 180, L. 1931.

81-2202. (1995.2) Forester to investigate. Whenever a proposal for such exchange is made and the owners of the respective tracts involved seem agreeable to negotiate such exchanges, such proposal shall be referred to the state forester of the state of Montana and he shall cause a thorough investigation to be made of all of the lands involved in such proposal and shall estimate the value of all of such lands and consider every factor in connection with such proposal as may affect the public interest.

History: En. Sec. 2, Ch. 180, L. 1931.

81-2203. (1995.3) Investigation and findings concerning exchange of land. That the state forester, whenever any proposal of exchange hereunder has been referred to him, shall as soon as he may conclude an investigation thereof report to the state board of land commissioners the facts disclosed by his investigation and shall include in his report a recommendation concerning such proposal including his reasons therefor in writing. If the state board of land commissioners after considering such report and recommendation and making or causing to be made such further investigation as it may deem advisable is of the opinion that such exchange is in the public interest, said state board of land commissioners shall thereupon consider the entire matter and shall make findings and conclusions concerning such proposal and thereupon shall make an order rejecting the said proposal and dismiss the same, or if in the judgment of said board said exchange is

in the public interest and should be made, the order shall so recite and shall contain an accurate description of all lands to be exchanged.

History: En. Sec. 3, Ch. 180, L. 1931.

81-2204. (1995.4) Hearing concerning exchange—notice—final order.

That if the state board of land commissioners shall approve the proposal for exchange, the commissioner of state lands and investments shall cause to be published at least once in some newspaper of general circulation in each county in which any of the lands involved are located, a notice reciting in general terms the proposal and describing the lands involved therein and ownership thereof which said notice shall fix a day not less than twenty (20) and not more than sixty (60) days from the date of the first publication thereof at which the state board of land commissioners will hear objections to the proposed exchange and at which any person, firm or corporation may appear in person or by representative and be heard thereon.

That within ten (10) days after the conclusion of said hearing said board of land commissioners shall make a final order describing therein the terms of the proposal for the exchange of the land involved and shall thereupon either dismiss the proposal as not being in the public interest or shall direct the proper officers to proceed to consummate the said exchange.

History: En. Sec. 4, Ch. 180, L. 1931.

81-2205. (1995.5) Rules and regulations may be made by state board.

The state board of land commissioners of the state of Montana is hereby authorized and directed to adopt and promulgate such rules, regulations and methods of procedure affecting or touching the exchanges of lands herein provided for, as in their judgment may seem advisable to the end that the public interests may be conserved.

History: En. Sec. 5, Ch. 180, L. 1931.

81-2206. (1995.6) Federal approval required. This act shall take effect and become operative only if, as and when the Congress of the United States shall authorize the conveyance of lands granted to the state of Montana by the United States and all lands taken in exchange for lands heretofore granted by the United States to the state of Montana, shall be subject to the same restrictions, limitations and provisions as the lands granted by the United States are now subject to, and all lands granted by the state in carrying out such exchanges shall thereafter be free from the restrictions and limitations provided by the enabling act of the state of Montana or other grant from the United States.

History: En. Sec. 6, Ch. 180, L. 1931.

CHAPTER 23

CERTAIN STREAM AND LAKE BEDS AND ISLANDS PROPERTY OF STATE

- Section 81-2301. Abandoned beds of navigable streams and lakes and certain islands in such streams and lakes declared property of the state of Montana.
 81-2302. Administration of lands by the state of Montana.
 81-2303. Survey of lands.
 81-2304. Prior action approved.

81-2301. Abandoned beds of navigable streams and lakes and certain islands in such streams and lakes declared property of the state of Montana. All lands lying and being in and forming a part of the abandoned bed of any navigable stream or lake in this state and lying between the meandered lines of such stream or lake as the same are shown by the United States survey thereof and all islands existing in the navigable streams or lakes in this state which have not been surveyed by the government of the United States and all lands which at any time in the past comprised such an island or any part thereof except such lands as are occupied by and belong to the adjacent landowners as accretions belong to the state of Montana to be held in trust for the benefit of the public schools of the state.

History: En. Sec. 1, Ch. 36, L. 1937. Navigable Waters \S 36(1).
45 C.J. Navigable Waters \S 212 et seq.

81-2302. Administration of lands by the state of Montana. The state board of land commissioners of the state of Montana shall have the authority and it shall be the duty of said board to lease or sell said lands in the same manner as other school lands of the state are leased and sold. The state board of land commissioners may sell or lease said lands without having the same surveyed but if the said board shall deem it to be the best interests of the state the said board shall have said lands surveyed as hereinafter directed. The proceeds from the leasing and sale of such lands shall be disposed of in the same manner as disposition is now made of the proceeds from the leasing and sale of school lands of the state of Montana.

History: En. Sec. 2, Ch. 36, L. 1937.

81-2303. Survey of lands. Whenever the state board of land commissioners shall deem it necessary that any of the lands mentioned in section 81-2301 be surveyed the said board shall cause the same to be surveyed by the county surveyor of the county in which said lands shall be situated; provided, however, that if there is no county surveyor of the county wherein the lands are situated, or if the county surveyor is unable to make such survey or if the best interests of the state so require, the state board of land commissioners shall appoint a qualified surveyor to make such surveys, and it shall be the duty of such county surveyor, or other surveyor appointed by the state board of land commissioners, to make such surveys when directed so to do by the said state board of land commissioners and he must make an actual survey thereof establishing four (4) corners of every quarter section and connecting the same with a United States survey and within thirty (30) days after such survey file in the office of the county clerk and recorder of said county a copy under oath of his field notes and plat and shall file a duly certified copy of said field notes and plat with the commissioner of state lands and investments. For the services required in connection with the survey the county surveyor or other surveyor appointed by the state board of land commissioners shall be entitled to fees as prescribed in section 25-235. Such fees shall be paid in the same manner as other expenses of the department of state lands and investments of the state of Montana.

History: En. Sec. 3, Ch. 36, L. 1937.

81-2304. Prior action approved. Any action heretofore taken by the department of state lands and investments and any officer or employee thereof in leasing or selling such lands as mentioned in section 81-2301 and disposing of the proceeds thereof in the same manner as disposition is now made of the proceeds from the leasing and sale of school lands is hereby approved and confirmed.

History: En. Sec. 4, Ch. 36, L. 1937.

TITLE 82

STATE OFFICERS, BOARDS AND DEPARTMENTS

- Chapter 1.
1. Accountant, state, 82-101 to 82-105.
 2. Armory board—leasing of armory sites, 82-201 to 82-211.
 3. Athletic commission, state, 82-301 to 83-311.
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 - 4A. Auditor, state: See state finance, 79-101 to 79-109.
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CHAPTER 1

ACCOUNTANT, STATE

- Section
- 82-101. Appointment of state accountant.
 - 82-102. Powers and duties.
 - 82-103. Duty of officers of institutions to facilitate examinations.
 - 82-104. Refusal to comply with methods of accounting.
 - 82-105. Salary, oath and bond.

82-101. (305) Appointment of state accountant. The state board of examiners shall appoint a state accountant, who shall hold his office for the term of four years unless sooner removed by the board.

History: En. Sec. 1, Ch. 86, L. 1909; States 46.
re-en. Sec. 305, R. C. M. 1921. 59 C.J. States § 186.

82-102. (306) Powers and duties. The state accountant shall have the power, and it shall be his duty:

1. To examine at least once every three months, the books and accounts of the treasurer and secretary of each of the following institutions, to-wit: University of Montana, Montana state normal school, agricultural college of Montana, state orphans' home, Montana state school of mines, Montana

Tit. 82, c. 1
Office of State
Controller
created
L. '51, c. 194
Secs. 1-17
pp. 440-449

82-101
Repealed
L. '51, c. 194
Sec. 15, p. 448

82-102
Amended
L. '51, c. 194
Sec. 5, p. 442

school for the deaf and blind, state reform school, soldiers' home, state prison, Montana state fair, and state insane asylum; also to examine into the general financial affairs and conditions of each of said institutions.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to any of said institutions, or managed or controlled by them, and to require of all officers, directors, and other persons connected with the financial affairs of such institutions an adherence to such general method and details as are required by law or said state accountant to be adopted and observed by such institutions; provided, that before any such general method and details of accounting, or any special rules are put into force in any of such institutions, they shall first be approved by the state board of examiners.

3. After the examination of the affairs, books, and accounts of said institutions, to make full report of such examinations to the state board of examiners within thirty days after such examination.

4. Said state accountant shall also perform such other duties or work of the state board of examiners as said board may order and direct.

History: En. Sec. 2, Ch. 86, L. 1909; States 73, 76.
re-en. Sec. 306, R. C. M. 1921. 59 C.J. States §§ 118 et seq., 123 et seq.

82-103
Repealed
L. '51, c. 194
Sec. 15, p. 448

82-103. (307) Duty of officers of institutions to facilitate examinations. All boards of directors, officers, employees, and other persons connected with the financial affairs of any of the institutions mentioned in the preceding section, must afford all reasonable facilities for the examination of accounts and investigations provided for in this act, and all boards of directors, officers, employees, and other persons connected with the financial affairs of any said institutions must make returns and exhibits to said accountant under oath, in such form and in such manner as he may prescribe, not conflicting with the law and the rules and regulations approved by the state board of examiners. Every director, officer, employee, or other person, wilfully violating the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars.

History: En. Sec. 3, Ch. 86, L. 1909; States 76.
re-en. Sec. 307, R. C. M. 1921. 59 C.J. States § 123 et seq.

82-104
Repealed
L. '51, c. 194
Sec. 15, p. 448

82-104. (308) Refusal to comply with methods of accounting. The refusal or neglect of any member of the executive board or other officer or employee of any of said institutions to comply with the general methods and details of accounting prescribed by the state accountant shall constitute a good and sufficient ground to summarily remove said person from said board, office, or position by the state board of examiners.

History: En. Sec. 4, Ch. 86, L. 1909; States 76.
re-en. Sec. 308, R. C. M. 1921. 59 C.J. States § 212.

82-105
Repealed
L. '51, c. 194
Sec. 15, p. 448

82-105. (309) Salary, oath and bond. The salary of said accountant shall be four thousand dollars (\$4,000) per annum and upon entering upon the discharge of the duties of such position he shall take the constitutional oath of office and file a bond in such sum as shall be fixed by the state board of examiners, to be approved by said board.

History: En. Sec. 5, Ch. 86, L. 1909; States⁶⁰.
re-en. Sec. 309, R. C. M. 1921; amd. Sec. 1, 59 C.J. States § 249.
Ch. 57, L. 1935.

CHAPTER 2

ARMORY BOARD—LEASING OF ARMORY SITES

- Section 82-201. Montana armory board created.
82-202. Name of board.
82-203. Organization—meetings—quorum.
82-204. Powers and limitations.
82-205. Verified expense claims allowed.
82-206. Objects of board.
82-207. Adjutant general authorized to locate and lease armory sites.
82-208. Lease to be submitted to board of examiners for approval.
82-209. Lease of buildings and sites for nonmilitary purposes.
82-210. Powers granted by this act supplemental.
82-211. Scope of act.

82-201. Montana armory board created. For the purposes herein provided there is created the Montana armory board, to consist of five members one of whom shall be the state accountant, one the state purchasing agent and the other three shall be appointed by the governor. Any vacancy in the Montana armory board shall be filled by appointment by the governor. The Montana armory board may, subject to the approval of the board of examiners, employ supervisors, caretakers and such other employees as may be necessary to properly manage and care for Armory buildings owned by said Montana armory board.

History: En. Sec. 1, Ch. 161, L. 1939; amd. Sec. 1, Ch. 123, L. 1941; amd. Sec. 1, Ch. 204, L. 1943.

Constitutionality

Held, on original application for a writ of injunction to restrain the Montana armory board from performing certain acts relating to the erection of armories in the cities of Helena and Bozeman, that ch. 161, l. 1939 (this section et seq.), does not con-

travene the sections of the state constitution enumerated as follows: art. IV, sec. 1; art. V, sec. 1; art. V, secs. 33, 34, and 35; art. VII, sec. 20; art. X, sec. 1; art. XII, sec. 2, art. XII, sec. 14; art. XIII, secs. 1, 2 and 4; art. XV, sec. 2, and art. XIV. Geboski v. Montana Armory Board, 110 M 487, 491, 103 P 2d 679.

Militia⁶⁰17.
40 C.J. Militia § 58 et seq.

82-202. Name of board. This board is hereby made a body politic and corporate, and shall have the name of "Montana armory board."

History: En. Sec. 2, Ch. 161, L. 1939.

82-203. Organization—meetings—quorum. The board shall organize by selecting from its membership a secretary and treasurer, and said board may change such officers from time to time. Three (3) members shall constitute a quorum at all meetings, provided all members have been notified of such meetings. The board shall hold its first meeting on the first Tuesday in April, 1939, and thereafter all meetings shall be held as provided by the by-laws of the board.

History: En. Sec. 3, Ch. 161, L. 1939; amd. Sec. 2, Ch. 123, L. 1941; amd. Sec. 1, Ch. 82, L. 1945.

82-204. Powers and limitations. The Montana armory board shall possess all the powers as a body corporate necessary and convenient to accomplish the objects and purposes prescribed by this act, including the following,

which, however, shall not be construed as a limitation upon the general powers hereby conferred:

(a) To enter into contracts and be contracted with in any matter connected with any corporate purpose, herein defined, providing, however, that the Montana armory board shall comply with sections 82-1131 and 82-1132, relating to the making of contracts and all such contracts shall be approved by the state board of examiners. It shall be the duty of the state examiner to examine all transactions, records, proceedings and operations of the armory board once a year and report the result of his examination to the state board of examiners. Provided, however, that neither the Montana armory board nor the board of examiners shall have power to obligate the state of Montana in any manner for or in connection with or on account of any bonds or other obligations heretofore issued by said Montana armory board and nothing contained in this act shall in any manner be construed as an assumption by the state of Montana of any liability whatsoever for or on account of any such bonds or obligations.

History: En. Sec. 4, Ch. 161, L. 1939; amd. Sec. 3, Ch. 123, L. 1941; amd. Sec. 2, Ch. 204, L. 1943.

Power of Adjutant General to Rent Armories

Held, that in view of the fact that the legislature in the 1939 session made an appropriation to the department of the adjutant general of the Montana national guard for rental of drill halls, etc., that officer has power to rent armories con-

structed under authority of ch. 161, L. 1939 (82-201 to 82-206); held, further that an appropriation of \$18,000 made in 1939 for each year of the biennium for expenses for additional units and the rebuilding of the state arsenal at Helena may not be used by the board as a part of the original investment in the construction of the proposed Helena and Bozeman armories. *Geboski v. Montana Armory Board*, 110 M 487, 493, 103 P 2d 679.

82-205. Verified expense claims allowed. No members of such board shall receive any compensation for services rendered under this act, except for necessary expenses incurred in performing duties prescribed by this act, provided that any and all expense claims shall be verified and be accompanied by vouchers and shall be approved by the chairman of said board of directors before payment.

History: En. Sec. 5, Ch. 161, L. 1939.

82-206. Objects of board. The objects of said board shall be to foster and build state armories in the state of Montana.

History: En. Sec. 6, Ch. 161, L. 1939.

82-207. Adjutant general authorized to locate and lease armory sites. The adjutant general of the state of Montana, in behalf of the state, is hereby authorized:

(a) To determine the municipalities wherein there is or may be a need of buildings and sites suitable for leasing by the state for armory or military purposes and to certify such determinations from time to time to Montana armory board;

(b) To pass upon the location of sites for such buildings selected by Montana armory board and to pass upon plans, specifications, estimates, and contracts for such buildings, and to determine their suitability and adequacy for lease and use by the state for armory or military purposes, and to certify to said board his approval thereof or suggestions for changes therein;

(c) To lease from Montana armory board any sites and buildings, then constructed or being constructed, suitable for use by the state of Montana for armory or other military purposes for such terms of years and at such rentals and under such covenants and reservations as may be agreed upon between him and said board; provided, however, that each such lease shall stipulate (1) that the state shall have the right to use all or any part of the leased building and site whenever and to the extent needed for armory or other military purposes; and (2) that no obligation to pay the rents therein agreed upon shall be binding upon or enforceable against the state except when and to the extent that moneys shall be duly appropriated for such purpose; and (3) that when all bonded and other debts of the board secured by the sites and buildings or by the income therefrom shall have been paid, all such sites and buildings shall be donated and conveyed to the state of Montana.

History: En. Sec. 1, Ch. 122, L. 1941.

82-208. Lease to be submitted to board of examiners for approval. The Montana armory board and the adjutant general shall submit to the state board of examiners any such lease made or about to be made between them in accordance with section 82-207 and, if so submitted, it shall be the duty of such board of examiners to examine, consider, and act upon the same and, if they find such lease fair and reasonable, they shall approve the same by resolution duly entered in their minutes, a copy of which shall be certified to the adjutant general and a copy certified to the Montana armory board. The adjutant general and the Montana armory board, or their respective representatives, shall be entitled to be heard by the board of examiners in reference to any lease so submitted.

History: En. Sec. 2, Ch. 122, L. 1941.

82-209. Lease of buildings and sites for nonmilitary purposes. Any county or other political subdivision or municipality of the state of Montana wherein, (or in the vicinity of a municipality), any such building has been or is about to be constructed may, by and through its duly constituted authorities, enter into a lease of such building and the site thereof, or any part of such building or site, for use by the county or subdivision or municipality for nonmilitary purposes, subject to the rights of the state of Montana to use such building and site for armory and military purposes, and subject to the provisions of section 82-207 and sections 82-201 to 82-206 as to the donation and conveyance of such site and building to the state of Montana, which lease may otherwise be for such period of time, upon such terms and at such rentals and for such purposes as may be agreed upon between the county commissioners or other governing body and the Montana armory board, and the commissioners or other governing body shall have the power to appropriate moneys out of funds for the payment of rents agreed upon.

History: En. Sec. 3, Ch. 122, L. 1941.

82-210. Powers granted by this act supplemental. The rights, powers, and duties granted to and imposed upon the adjutant general, the state board of examiners, the counties and other political subdivisions and municipi-

palities, and their governing bodies, by this act shall be additional to all rights, powers, and duties otherwise existing in any thereof.

History: En. Sec. 4, Ch. 122, L. 1941.

82-211. Scope of act. That the provisions of section 82-210, shall pertain to such contracts notwithstanding any limitations or restrictions imposed by any other statute, and particularly section 11-1202.

History: En. Sec. 5, Ch. 122, L. 1941.

CHAPTER 3

ATHLETIC COMMISSION, STATE

- Section 82-301. State athletic commission—appointment and term of members—compensation and expense—meetings—chairman—seal—quorum.
- 82-302. Secretary of commission—duties—limitation on salary and expense—annual report of commission to governor.
- 82-303. Jurisdiction over boxing and sparring matches—licenses—application for license.
- 82-304. Construction and equipment of buildings.
- 82-305. Duration of bouts—glove specifications—physical examination of participants.
- 82-306. Forfeiture of license for conducting fake bouts.
- 82-307. Penalty for participating in fake bouts.
- 82-308. Report of ticket sales—tax on gross receipts—moneys paid into veterans' memorial fund—expenditures—investment.
- 82-309. Bond of applicant for license.
- 82-310. Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax.
- 82-311. Violations constitute misdemeanor.

82-301. (4551) State athletic commission—appointment and term of members—compensation and expense—meetings—chairman—seal—quorum. There is hereby created an athletic commission to be known as the state athletic commission, consisting of three persons, to be appointed by the governor. One of said persons shall be appointed for a period of one year from and after the first of March, following his appointment, and one for a period of three years from and after the first of March, following his appointment, and upon the expiration of the terms of such respective commissioners, the governor shall appoint their successors, each to serve for a term of three years, and all to serve until their successors are appointed and qualified. The members of the commission shall serve without compensation but shall be allowed necessary expenses, to be paid by the state treasurer on warrant properly drawn out of the proceeds of the tax to be collected as hereinafter provided. The commission shall maintain general offices for the transaction of its business at a place to be by them designated. The members of the commission shall, at their first meeting after their appointment, and on or before the first day of April of each year thereafter, elect one of their number chairman of the commission, shall adopt a seal for the commission and may make such rules for the administration of their office, not inconsistent herewith, as they may deem expedient; and they may hereafter amend or abrogate such rules. Two of the members of the commission shall constitute a quorum to do business; and the concurrence of at least two commissioners shall be necessary to render a choice or decision by the commission.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4551, R. C. M. 1921; amd. Sec. 1, Ch. 103, L. 1927.

Theaters and Shows 3.
62 C.J. Theaters and Shows § 7 et seq.

82-302. (4552) Secretary of commission—duties—limitation on salary and expense—annual report of commission to governor. The commission shall appoint, and at its pleasure remove, a secretary to the commission, whose duty it shall be to keep a full and true record of all its proceedings, preserve at its general office all its books, documents and papers, prepare for service such notices and other papers as may be required of him by the commission and to perform such other duties as the commission may prescribe; and he may under the direction of the commission issue subpoenas for the attendance of witnesses before the commission and may, under direction of the commission, administer oaths in all matters pertaining to the duties of his office or connected with the administration of the affairs of the commission. The necessary traveling and other necessary expenses, including the salary of the secretary not exceeding twenty-five dollars (\$25.00) per month, which shall be determined by the commission, shall be paid monthly by the state treasurer on warrant properly drawn out of the proceeds of the tax to be collected as herein provided. The commission shall annually make to the governor a full report of its proceedings for the year ending with the first day of January, and may submit, with such reports, such recommendations pertaining to its affairs as to it shall seem desirable.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4552, R. C. M. 1921; amd. Sec. 2, Ch. 103, L. 1927.

82-303. (4554) Jurisdiction over boxing and sparring matches—licenses—application for license. The commission shall have, and hereby is invested with, the sole direction, management, and control and jurisdiction over all boxing and sparring matches and exhibitions to be conducted, held or given within the state and by any club, corporation or association; and no boxing or sparring match or exhibition shall be conducted, held or given within the state except pursuant to its authority and in accordance with the provisions of this act. The commission may, in its discretion, issue, and at its pleasure revoke, a license to conduct, hold or give boxing and sparring matches and exhibitions to any club, corporation or association, and which, if it be an amateur athletic association, may be incorporated or organized in accordance with the rules as may be prescribed by the commission. Nothing in this act shall be construed as relating to or prohibiting amateur boxing or wrestling exhibitions conducted in and by regularly organized amateur clubs, schools and gymnasiums. Every license shall be subject to such rules and regulations, and amendments thereof, as the commission may prescribe. Every application for a license, as herein provided for, shall be in writing and shall be addressed to the commission and shall be verified by such officer of the club, corporation or association on whose behalf the application may be made. It shall contain a recital of such facts as, under the provisions hereof, will show the applicant entitled to receive a license, and in addition thereto, such other facts and recitals, as the commission may by rules require to be shown.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4554, R. C. M. 1921; amd. Sec. 3, Ch. 103, L. 1927.

Cross-Reference

Boxing or wrestling as misdemeanor, sec. 94-3513.

Validity of license tax or fee on boxing exhibition. 58 ALR 1343.

Constitutionality and construction of statutes subjecting pugilistic and wrestling contests to regulation by commission or otherwise. 83 ALR 696.

82-304. (4555) Construction and equipment of buildings. All buildings or structures used or intended to be used, for the purpose of this act, shall be properly ventilated and provided with fire exits and fire escapes, if there need be, and in all manner conform to the law, ordinances and regulations pertaining to buildings in the city, town, or village where situated. Where a part of a building or structure is used for the purpose set forth in this act, this section shall apply in the same manner.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4555, R. C. M. 1921; amd. Sec. 4, Ch. 103, L. 1927.

Health—32.

39 C.J.S. Health §§ 23, 24.

82-305. (4556) Duration of bouts—glove specifications—physical examination of participants. A boxing or sparring match or exhibition shall be not more than twenty (20) rounds in length; and the contestants shall wear during such contests, gloves weighing at least six (6) ounces. Provided, also, that no person or persons may take part in an exhibition or sparring match unless they have first passed a rigorous physical examination to determine their fitness to engage in any such exhibition. Said examination to be conducted by a regular practicing physician, said physician to be designated by the commission.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6,

1920; re-en. Sec. 4556, R. C. M. 1921; amd. Sec. 5, Ch. 103, L. 1927; amd. Sec. 1, Ch. 185, L. 1947.

82-306. (4557) Forfeiture of license for conducting fake bouts. Any club, corporation or association which may conduct, hold or give, or participate in, any sham or fake boxing or sparring match or exhibition shall thereby forfeit license issued in accordance with the provisions of this act, which shall therefor be, by the commission, cancelled and declared void; and it shall not thereafter be entitled to receive another such or any license pursuant to the provisions of this act.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4557, R. C. M. 1921; amd. Sec. 6, Ch. 103, L. 1927.

Grounds for and justification of revocation of license or permit for an exhibit or amusement enterprise. 79 ALR 286.

82-307. (4558) Penalty for participating in fake bouts. Any contestant who shall participate in any sham or fake boxing or sparring match or exhibition shall be penalized in the following manner: For the first offense, he shall be restrained for a period of six months, such period to begin immediately after the occurrence of such offense, from participating in any competition to be held or given by any club, corporation or association duly licensed to give or hold such boxing or sparring match or exhibition; for

the second offense he shall be totally disqualified from further admission or participation in any boxing contest held or given by any club, corporation or association duly licensed for said purpose.

History: En. as Ch. 190, L. 1919; app. Theaters and Shows 8.
by people on ref. Nov. 2, 1920, effective 62 C.J. Theaters and Shows § 95.
under governor's proclamation Dec. 6,
1920; re-en. Sec. 4558, R. C. M. 1921; amd.
Sec. 7, Ch. 103, L. 1927.

82-308. (4559) Report of ticket sales—tax on gross receipts—moneys paid into veterans' memorial fund—expenditures—investment. Every club, corporation or association which may hold or exercise any of the privileges conferred by this act, shall within twenty-four hours after the determination of every contest furnish to the commission a written report, duly verified by one of its officers, showing the number of tickets sold for such contest and the amount of gross proceeds thereof, and such other matters as the commission may prescribe, and shall also within the said time pay to the county treasurer a tax of five per centum (5%) of its total gross receipts from the sale of the tickets of admission to such boxing or sparring match or exhibition, which shall be transmitted to the state treasurer by the county treasurer within a period of ten days after its collection and be applied to the payment of the expenses of the commission, and the salary of the secretary of the commission, as herein provided. And the money so collected shall be paid to the state treasurer to be kept and held in a separate and special fund to be designated the "veterans' memorial fund," and used exclusively for the purposes herein provided. The monies so received and held by the state treasurer in such special fund shall be used and devoted for the expenses above specified and the balance to be held and retained exclusively for the erection and maintenance of a suitable veterans' memorial building. Such funds to be drawn upon and expended only upon proper and legal claims made against the fund, first presented and approved by the state board of examiners. All money in the said fund from time to time may be invested by the state treasurer in any manner provided for by law for the investment of the state monies.

History: En. as Ch. 190, L. 1919; app. by people on ref. Nov. 2, 1920, effective under governor's proclamation Dec. 6, 1920; re-en. Sec. 4559, R. C. M. 1921; amd. Sec. 8, Ch. 103, L. 1927.

References

Willett v. State Board of Examiners et al., 112 M 317, 320, 115 P 2d 287.

States 127; Theaters and Shows 3.
59 C.J. States § 378; 62 C.J. Theaters and Shows § 7 et seq.

82-309. (4560) Bond of applicant for license. Before any license shall be granted to any club, corporation, or association to conduct, hold or give any boxing or sparring match or exhibition, such applicant therefore shall execute and file with the state treasurer a bond in the sum of five thousand dollars (\$5000.00) payable to the state of Montana, to be approved as to form by the attorney general of the state of Montana, and as to the sufficiency of the sureties thereon by the commission, which said bond shall be conditioned upon the payment of the tax hereby imposed. Upon the filing and approving of such bond, the commission shall issue to such applicant a license as hereinbefore provided.

History: En. as Ch. 190, L. 1919; app. 1920; re-en. Sec. 4560, R. C. M. 1921; amd. by people on ref. Nov. 2, 1920, effective Sec. 9, Ch. 103, L. 1927.
under governor's proclamation Dec. 6,

82-310. (4561) Examination of books and records on failure to make report or unsatisfactory report—penalty for failure to pay tax. Whenever any such club, corporation or association shall fail to make a report of any contest at the time prescribed by this act or whenever such report is unsatisfactory to the commission, it may examine or cause to be examined the books and records of such club, corporation or association, and subpoena and examine under oath its officers and other persons as witnesses for the purpose of determining the total amount of its gross receipts for any contest and the amount of tax due pursuant to the provisions of this act, which tax he may, upon and as the result of such examination, fix and determine. In case of the default in the payment of any tax so ascertained to be due, together with the expenses incurred in making such examination, for a period of twenty days after notice to such delinquent club, corporation or association of the amount at which the same may be fixed by the commission, such delinquent shall ipso facto, forfeit its license and shall be thereby disqualified from receiving any new license or any renewal of license; and it shall in addition forfeit to the state of Montana the sum of five hundred dollars (\$500.00), which may be recovered by the attorney general in the name of the state of Montana in the same manner as other penalties are by law recovered, and when collected shall be used and applied as other monies received under the provisions hereof.

History: En. as Ch. 190, L. 1919; app. 1920; re-en. Sec. 4561, R. C. M. 1921; amd. by people on ref. Nov. 2, 1920; effective Sec. 10, Ch. 103, L. 1927.
under governor's proclamation Dec. 6,

82-311. (4562) Violations constitute misdemeanor. Any person who violates any of the provisions of this act, for which a penalty is not herein expressly prescribed, shall be guilty of a misdemeanor.

History: En. as Ch. 190, L. 1919; app. Theaters and Shows 9.
by people on ref. Nov. 2, 1920; effective 62 C.J. Theaters and Shows § 95.
under governor's proclamation Dec. 6,
1920; re-en. Sec. 4562, R. C. M. 1921; amd.
Sec. 11, Ch. 103, L. 1927.

CHAPTER 4

ATTORNEY GENERAL

- Section 82-401. General duties.
82-402. Commitment forms to be prescribed by attorney general.
82-403. Salary of attorney general.
82-404. Official bond.
82-405. Assistant attorneys general—appointment and salary.
82-406. Qualification of assistants.
82-407. Law clerk and stenographer—salary.
82-408. Additional stenographer—salary.
82-409. Duty as to escheats.
82-410. Municipal bond issue proceedings to be submitted to attorney general.
82-411. Attorney general to report as to regularity of proceedings.
82-412. Limitation of action to test validity.
82-413. Purpose of act.

82-401. (199) General duties. It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all monies which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business intrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof, and to any state officer, board, or commission, any county attorney, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices.

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state, and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or incumbrance taking precedence of the judgment in favor of the state, under the direction of the board of examiners to redeem such property from such prior judgment, lien, or incumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute,

in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, board of pardons, state board of land commissioners, state board of education, board of state prison commissioners, state board of commissioners for the insane, deaf, dumb and blind, and other duties prescribed by law.

12. To report to the governor, at the time prescribed by section 59-702 of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys, and to report to the governor as provided in section 59-705.

History: En. Sec. 460, Pol. C. 1895; re-en. Sec. 193, Rev. C. 1907; re-en. Sec. 199, R. C. M. 1921. Cal. Pol. C. Sec. 470.

Assistance of County Attorneys

The attorney general, by virtue of the power conferred upon him by the seventh subdivision of this section, has the right to appear before the grand jury, and examine witnesses before it, in assisting a county attorney. State ex rel. Nolan v. District Court, 22 M 25, 27, 55 P 916.

When the emergency arises calling the attorney general to the assistance of the county attorney, he necessarily has the authority to do anything that the inferior officer may do, or, if the circumstances require it, undo what has already been done. State ex rel. Nolan v. District Court, 22 M 25, 28, 55 P 916; Independent Publishing Co. v. County of Lewis and Clark, 30 M 83, 85, 75 P 860.

Causes in Which the County is a Party

The attorney general must appear in all cases to which the state is a party but there is no law which authorizes him to contract on behalf of the county, and the county cannot legally pay expenses incurred in printing briefs on behalf of the state in a criminal cause on appeal. Independent Publishing Co. v. County of Lewis and Clark, 30 M 83, 86, 75 P 860.

The attorney general, being by law the attorney of record in all causes pending in the supreme court to which a county may be a party, and as such entitled to be served with a copy of the transcript and appellant's brief, and appeal by plaintiff in an action against a county may be dis-

missed for failure to so serve him. McIntosh Hardware Co. v. Flathead County, 32 M 254, 256, 80 P 239.

Other Duties Prescribed by Law


Under the constitution and this section, imposing upon the attorney general certain duties and "other duties prescribed by law," and in view of the fact that the office of the attorney general, as it existed in England under the common law, was adopted as a part of the governmental machinery of this state, the common-law duties of that officer attach themselves to the office, in the absence of express restrictions, in so far as they are applicable and in harmony with our system of government. State ex rel. Ford v. Young, 54 M 401, 403, 170 P 947.

Weight of Opinion of Attorney General

While construction of a law in an opinion of the attorney general is not binding upon the supreme court, even though acquiesced in by several legislative sessions, it is entitled to respectful consideration and will be upheld if not palpably erroneous. State ex rel. Barr v. District Court, 108 M 433, 435, 91 P 2d 399.

References

Cited or applied as section 193, revised codes, in State ex rel. Pew v. Porter, 57 M 535, 537, 189 P 618.

Attorney General  6, 7.

7 C.J.S. Attorney General §§ 5, 6, 8, 9.
5 Am. Jur. 234, Attorney General, §§ 5 et seq.

82-402. (199.1) Commitment forms to be prescribed by attorney general. It shall, from and after the passage and approval of this act, be the duty of the attorney general of the state of Montana to prescribe the form of blanks to be used by the clerks of the district courts in issuing commitments

to the several state institutions, admission to which requires a court commitment.

History: En. Sec. 1, Ch. 158, L. 1925. Attorney General 6.
7 C.J.S. Attorney General §§ 5, 6.

82-403. (200) Salary of attorney general. The annual salary of the attorney general of the state of Montana, to include all services rendered ex officio as member of any board or commission, as now required, or which may be hereafter devolved upon him by law, is four thousand five hundred dollars.

History: En. Sec. 1, Ch. 78, L. 1915;
re-en. Sec. 200, R. C. M. 1921.

82-404. (201) Official bond. The attorney general must execute to the state an official bond in the sum of twenty-five thousand dollars.

History: En. Sec. 462, Pol. C. 1895; Attorney General 1.
re-en. Sec. 195, Rev. C. 1907; re-en. Sec. 7 C.J.S. Attorney General § 2.
201, R. C. M. 1921.

82-405. (202) Assistant attorneys general—appointment and salary. The attorney general of the state of Montana is hereby authorized to appoint one assistant attorney general, who shall receive a salary of thirty-six hundred dollars per annum, and three assistant attorneys general, who shall receive as salary the sum of three thousand dollars per annum, who shall hold such appointments during the pleasure of the attorney general making such appointments.

History: Ap. p. Sec. 1, Ch. 13, L. 1907; Attorney General 2, 3.
Sec. 196, Rev. C. 1907; amd. Sec. 1, Ch. 77, 7 C.J.S. Attorney General §§ 3, 4.
L. 1915; amd. Sec. 1, Ch. 116, L. 1917; 5 Am. Jur. 243, Attorney General, § 13.
amd. Sec. 1, Ch. 112, L. 1919; re-en. Sec.
202, R. C. M. 1921.

82-406. (203) Qualification of assistants. Each of said assistant attorneys general must be duly licensed to practice law in the state of Montana at the time of his appointment.

History: Ap. p. Sec. 2, p. 96, L. 1901; Attorney General 2.
en. Sec. 2, Ch. 13, L. 1907; Sec. 197, Rev. 7 C.J.S. Attorney General § 3.
C. 1907; re-en. Sec. 203, R. C. M. 1921.

82-407. (204) Law clerk and stenographer—salary. The attorney general is hereby authorized to appoint a law clerk and stenographer, who shall receive as salary the sum of two thousand one hundred dollars per annum, and shall hold such appointment during the pleasure of the attorney general making such appointment.

History: En. Sec. 1, Ch. 77, L. 1915; States 53, 61.
re-en. Sec. 204, R. C. M. 1921. 59 C.J. States §§ 188, 207, 253 et seq.

82-408. (205) Additional stenographer—salary. The attorney general is hereby authorized to appoint an additional stenographer at a salary of twelve hundred dollars per annum, when in his judgment the work devolving upon his office and the public service seem to require such appointment.

History: En. Sec. 1, Ch. 77, L. 1915;
re-en. Sec. 205, R. C. M. 1921.

82-409. (206) Duty as to escheats. It is the duty of the attorney general to institute investigation for the discovery of all real and personal

82-403
(200 RCM '35)
Repealed and
New Matter
SL. 49, C. 18
Secs. 1-5
PP. 389-391

property which may have escheated or should escheat to the state, and for that purpose has the power to cite any and all persons before any of the district courts of this state to answer investigations and render accounts concerning said property, real or personal, and to examine all books and papers of any and all corporations. When any real or personal property is discovered, which should escheat to the state, the attorney general must institute suit in the district court of the county where said property shall be situated, for the recovery, to escheat the same to the state. The proceedings in all such actions shall be those provided for in sections 91-515 to 91-518.

History: En. Sec. 463, Pol. C. 1895; re-en. Sec. 200, Rev. C. 1907; re-en. Sec. 206, R. C. M. 1921. Cal. Pol. C. Sec. 474.

Operation and Effect

While under the common law only the real property of an intestate decedent leaving no heirs competent to take escheated to the state, title vesting in the state immediately, under this section however, all property, real, personal, and every right of property of whatever nature, is subject to escheat, but title thereto does

not vest in the state until institution by the attorney general of an action to reduce the property to the possession of the state, and favorable judicial determination thereof. *State v. Kearns*, 79 M 299, 308, 257 P 1002.

References

Bottomly v. Meagher County, 114 M 220, 227, 133 P 2d 770.

Escheat \supset 6.

20 C.J.S. Escheat §§ 5, 7-18.

82-410. Municipal bond issue proceedings to be submitted to attorney general. The governing body of any school district, county, city or town shall submit a certified copy of all proceedings preliminary to such issue to the attorney general, together with such other proceedings, certificates and records as he may require, and request his report as to examination and validity.

History: En. Sec. 1, Ch. 139, L. 1939.

82-411. Attorney general to report as to regularity of proceedings. It is hereby made the duty of the attorney general to examine certified copies of all proceedings preliminary to the issuance of bonds by any school district, county, city or town, which may be submitted to him for such examination, and if found regular and valid he shall deliver to the recording officer of such municipality a report of his examination and determination as to the validity of such bonds. A certified copy of such report shall be filed with the officer required by law to register said bonds and a notation thereof shall be entered in the bond register.

History: En. Sec. 2, Ch. 139, L. 1939.

82-412. Limitation of action to test validity. No municipal bond of any issue whereof the preliminary proceedings have been submitted to and approved by the attorney general, shall be held invalid because of any defect or failure to comply with any statutory provision relating to the authorization, issuance or sale of said bonds, unless an action to contest the validity thereof shall be brought within thirty days after the date of sale.

History: En. Sec. 3, Ch. 139, L. 1939.

82-413. Purpose of act. This act is intended to improve the marketability of bonds issued by school districts, counties, cities or towns, in order that said bonds may be sold upon the most favorable terms, and if any sec-

tion, sub-section, sentence, clause or phrase is for any reason held unconstitutional such decision shall not affect the validity of the remaining portions of the act, provided, they are sufficient to carry out the purposes as herein expressed.

History: En. Sec. 4, Ch. 139, L. 1939.

CHAPTER 4A

AUDITOR, STATE

See State Finance, Secs. 79-101 to 79-109.

CHAPTER 5

CLERK AND ATTENDANT OF SUPREME COURT

Section	82-501.	Election and term of office.
	82-502.	General duties.
	82-503.	Fees.
	82-504.	Duties.
	82-505.	Settlements, when and how made.
	82-506.	Salary of the clerk of the supreme court.
	82-507.	Official bond.
	82-508.	Court attendant—appointment—salary.

82-501. (370) Election and term of office. There must be a clerk of the supreme court, who must be elected by the electors at large of the state, and hold his office for the term of six years from the first Monday of January next succeeding his election, except that the clerk first elected under the constitution holds his office only until the general election in the year one thousand eight hundred and ninety-two, and until his successor is elected and qualified.

History: En. Sec. 870, Pol. C. 1895;
re-en. Sec. 299, Rev. C. 1907; re-en. Sec.
370, R. C. M. 1921. Cal. Pol. C. Secs. 749-
758.

Cross-Reference

Filling vacancy, sec. 59-607.

Clerks of Courts—3, 7.

14 C.J.S. Clerks of Courts §§ 3, 7.

82-502. (371) General duties. The clerk of the supreme court must perform such duties as are prescribed by law and the rules and practice of the court.

History: En. Sec. 871, Pol. C. 1895;
re-en. Sec. 300, Rev. C. 1907; re-en. Sec.
371, R. C. M. 1921.

Clerks of Courts—66, 67.

14 C.J.S. Clerks of Courts §§ 35-38.

14 Am. Jur. 349, Courts §§ 136 et seq.

82-503. (372) Fees. He must collect in advance the following fees: For filing the transcript on appeal, in each civil case appealed to the supreme court, ten dollars (\$10.00) payable by the appellant, and five dollars (\$5.00) payable by respondent, at the time of his appearance, in full for all services rendered in each case, up to the remittitur to the court below; for filing petition for any writ, ten dollars (\$10.00), in full for all services rendered in each cause; for certificate of admission as attorney and counselor, five dollars (\$5.00); for making transcripts, copies of papers or record, fifteen cents (15c) per folio; for comparing any document requiring a certificate, five cents (5c) per folio; for each certificate under seal, one dollar (\$1.00).

82-503
(372 RCM '35)
Ref. to
S.L. '49, C. 153
Sec. 7, P. 340

All fees collected by him must be paid into the state treasury, all of which shall be credited to the credit of the state law library fund.

History: En. Sec. 872, Pol. C. 1895; re-en. Sec. 301, Rev. C. 1907; re-en. Sec. 372, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1939; amd. Sec. 1, Ch. 112, L. 1943.

Cross-Reference

Fees, sec. 25-111.

Operation and Effect

The fee bill of the clerk of the supreme court is found in this section, and contains no provision authorizing him to collect an appearance fee from the defendant in special proceedings. State ex rel. Baker v. Second Judicial District Court, 24 M 425, 427, 62 P 689; State ex rel. King v. Second Judicial District Court, 25 M 1, 2, 63 P 402. See, also, State ex rel. Healy v. District Court, 26 M 224, 226, 68 P 470.

The fees of the clerk are prescribed by

the legislature under this section. No fee is prescribed for the filing of a motion and therefore no fee could be accepted by the clerk for he may not collect any fee not prescribed by law. State ex rel. Hall v. Niewoehner, 116 M 437, 454, 155 P 2d 205.

References

Cited or applied in Montana etc. Co. v. Boston etc. Min. Co., 33 M 400, 405, 84 P 706; Finley v. School Dist. No. 1, 51 M 411, 417, 153 P 1010.

Clerks of Courts—11 et seq.

14 C.J.S. Clerks of Courts §§ 9, 13, 14 et seq.

Liability of clerk of court or his bond for money paid into his hands by virtue of his office. 59 ALR 60.

82-504. (373) Duties. It is the duty of the clerk to keep the seal of the supreme court, its records and files, and the roll of attorneys and counselors at law; to adjourn the court from day to day at the beginning of any term, in the absence of any judge, and until the arrival of a majority of their number; to file all papers or transcripts required to be filed by law; to issue writs and certificates and approve bonds or undertakings when so required; to make out all transcripts to the supreme court of the United States; to make copies of papers or records when demanded by law, or the rules of the court, and to perform such other duties as may be required of him by the supreme court.

History: Ap. p. Sec. 3, p. 208, L. 1891; amd. Sec. 873, Pol. C. 1895; re-en. Sec. 302, Rev. C. 1907; re-en. Sec. 373, R. C. M. 1921.

References

Cited or applied as section 873, political

code, in Montana etc. Co. v. Boston etc. Min. Co., 33 M 400, 405, 84 P 706.

Clerks of Courts—67, 68.

14 C.J.S. Clerks of Courts §§ 38, 47.

82-505. (374) Settlements, when and how made. He is responsible and must account for, and in his settlement with the state auditor must be charged with, the full amount of all fees collected or chargeable, and accruing in causes brought into the court for services rendered therein up to the time of each settlement, which settlement must take place quarterly, and must immediately thereafter pay the amount found due into the treasury. He must also, at the end of each quarter, render to the state auditor, in such form as that officer prescribes, an account in detail, under oath, of all fees chargeable and accruing in causes brought into court and not included in his previous accounts rendered. His salary must not be allowed or paid until all fees so accruing, and for which he is chargeable, have been accounted for and paid over.

History: En. Sec. 874, Pol. C. 1895; re-en. Sec. 303, Rev. C. 1907; re-en. Sec. 374, R. C. M. 1921.

Clerks of Courts—35.

14 C.J.S. Clerks of Courts § 25.

82-506. (375) Salary of the clerk of the supreme court. The annual salary of the clerk of the supreme court for all services now required, or which may hereafter be devolved upon him by law, is three thousand six hundred dollars.

History: En. Sec. 1, Ch. 116, L. 1907;
Sec. 304, Rev. C. 1907; re-en. Sec. 375,
R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1945.

Clerks of Courts⇒33.
14 C.J.S. Clerks of Courts § 24.

82-506
(375 RCM '35)
Repealed and
New Matter
SL '49, C. 182
Secs. 1-5
PP. 389-391

82-507. (376) Official bond. The clerk of the supreme court must execute an official bond in the sum of three thousand dollars.

History: En. Sec. 876, Pol. C. 1895;
re-en. Sec. 305, Rev. C. 1907; re-en. Sec.
376, R. C. M. 1921.

Clerks of Courts⇒4.
14 C.J.S. Clerks of Courts § 4.
43 Am. Jur. 173, Public Officers, § 394

NOTE.—Bond is given as fixed by sec. et seq.
6-101.

82-508. (377) Court attendant—appointment—salary. The supreme court must appoint a court attendant, who shall hold office at the pleasure of the court, and who shall act as law clerk to the supreme court justices, and perform any and other duties prescribed by the supreme court. Whenever the clerk of the supreme court is incapacitated or absent, the attendant of the supreme court is hereby authorized to perform all the functions and duties of said clerk. Salary for all the duties now required of the court attendant shall be fixed at that figure the supreme court shall deem reasonable and just, provided that the salary per annum shall not exceed twenty-four hundred dollars (\$2400.00).

History: En. Sec. 1, Ch. 20, L. 1913;
re-en. Sec. 377, R. C. M. 1921; amd. Sec. 4,
Ch. 38, L. 1939.

Courts⇒58.
21 C.J.S. Courts § 142.

82-508
(377 RCM '35)
Amended
SL '49, C. 128
Sec. 2, P. 268

CHAPTER 6

DEPUTIES—APPOINTMENT BY CERTAIN OFFICERS— CLERKSHIP OF CONSOLIDATED BOARDS

Section 82-601. Deputy state officers.
82-602. Consolidation of clerkships.

82-601. (122) Deputy state officers. The secretary of state, state treasurer, state auditor, clerk of the supreme court, and the state superintendent of public instruction shall each appoint a deputy, who, in the absence of the principal, or in the case of vacancy in his office, shall perform all the duties of office until such disability be removed or vacancy be filled.

Such deputy shall subscribe, take and file the oath of office provided by law for other state officers before entering upon the performance of his duties. The principal shall be responsible under his official bond for all the official acts of his deputy and may revoke his appointment at his pleasure, and may require the deputy to give him a bond in such sum as the principal may determine, which bond shall be made, executed, approved and filed as other state bonds; provided, nothing herein contained shall be construed to authorize an increase of the number of employees in any office.

History: En. Sec. 1, Ch. 86, L. 1903; 122, R. C. M. 1921; amd. Sec. 1, Ch. 181,
re-en. Sec. 143, Rev. C. 1907; re-en. Sec. L. 1947.

82-601
(122 RCM '35)
Amended
SL '49, C. 8
Sec. 1, P. 18

NOTE.—The bond of the deputy secretary of state is fixed by sec. 6-101 at \$2,000. The bond of the deputy state treasurer is fixed at \$25,000.

States⇒50.

59 C.J.S. States § 187.

82-602. (123.1) Consolidation of clerkships. The clerkship of the state board of examiners and the clerkship of the consolidated boards are hereby consolidated. The clerk of the state board of examiners, in addition to his duties as clerk of said board, shall perform all of the duties of clerk on each of the following boards: the board of pardons, the board of commissioners for the insane, and the board of state prison commissioners.

History: En. Sec. 1, Ch. 74, L. 1925.

States⇒53.

59 C.J. States §§ 188, 207.

CHAPTER 7

EMBALMERS AND FUNERAL DIRECTORS, STATE BOARD OF

- Section 82-701. Creation of state board of embalmers and funeral directors.
- 82-702. Powers of board—annual meetings, compensation, employment—treasurer of board—bond.
- 82-703. Qualifications to secure licenses for embalming—fee—internes or apprentice—license—fees.
- 82-704. Funeral director—qualifications—application for license—fee—examination.
- 82-705. Definitions.
- 82-706. Violation a misdemeanor—embalming without license forbidden—re-examination, date, renewal.
- 82-707. Registration of internes and apprentices.
- 82-708. Denial of new licenses, reasons—proviso—charges and hearing—appeals.
- 82-709. Disposition of fees collected.
- 82-710. Interpretation of act.
- 82-711. Certain students not affected by act.

82-701. Creation of state board of embalmers and funeral directors. From and after the passage of this act there is hereby created a state board, known and designated as a board of embalmers and funeral directors of the state of Montana, consisting of five (5) members, all of whom have heretofore been licensed at the time of their appointment, and who shall have been, for more than one (1) year prior to the passage of this act, engaged in funeral directing as herein defined, and who shall be appointed by the governor, with the consent of the senate. The first board shall be appointed on or before July 1, 1941, and members shall be appointed for five (5) years, except that in the first appointment one of the board shall be appointed for one (1) year, one for two (2) years, one for three (3) years, one for four (4) years and one for five (5) years. Thereafter, annually, at the expiration of the term of a member of said board, on the 1st day of July of each year, commencing July 1942, the governor shall, by and with the consent of the senate, appoint one (1) person, who shall serve as a member of said board for a period of five (5) years, or until his successor is appointed and qualified. The member so appointed on the 1st day of July, 1942, and the 1st day of July of each and every year thereafter, shall immediately assume the duties of his office, and shall, in all respects, be a fully qualified member.

History: En. Sec. 1, Ch. 67, L. 1941.

82-702. Powers of board—annual meetings, compensation, employment—treasurer of board—bond. All records, files and funds in the office of the

Montana state board of health, or in the possession of any and all persons whomsoever, in connection with the administration, supervision and control of embalmers and funeral directors of the state of Montana, shall be delivered to the board created under this act. Said board shall have the power to select a president, secretary and treasurer; and to adopt and promulgate and enforce such rules and regulations for the transaction of its business and the management of its affairs, the betterment and promotion of the educational standards of the profession of embalming and funeral directing and the standards of service and practice to be followed in the profession of embalming and funeral directing in the state of Montana as it deems expedient and consistent with the laws of the state of Montana. Said board may, by its rules and regulations, provide for the care or disposition of dead human bodies in sparsely populated sections of the state of Montana, when it is impossible to procure the services of a licensed embalmer.

The board shall hold not less than one meeting annually for the purpose of examining applicants for licenses, such meetings to be held on the second Wednesday in July, at Helena, Montana. Time and place of each such meeting shall be given by publication in three (3) daily newspapers of general circulation, each in different locations in the state, said publication to be once a week for two (2) consecutive weeks immediately preceding each such meeting. All manuscript submitted as answers to questions in an examination shall be kept on file for six (6) months by the board and shall be made available for review by the applicant in the presence of a member of the board, or shall be made available in case the applicant appeals.

The board shall publish in its rules and regulations the subjects to be covered in the examination and the standards to be attained thereon.

The board may hold such other meetings as it may deem necessary and may transact any business at any such meeting, and notice of the time, place and purpose of such meeting shall be given to the members of the board. Three (3) or more members shall comprise a quorum authorizing the board to transact the business prescribed under this act.

All of the members of the said board shall serve without compensation, providing that each member shall be reimbursed for his necessary traveling expenses, and the necessary expense incident to his attendance upon the business of the board, and providing the secretary shall receive and be paid an annual salary, the amount and method of payment of which shall be fixed by said board, and in addition thereto, such secretary shall receive his necessary traveling and other incidental expenses as are incurred in the performance of such duties and all of such expenses, and compensation shall be paid out of the receipts of the board.

The board may employ such clerical or other help or assistance as may be necessary to carry out the provisions of this act, and the terms of such employment shall be designated by the board.

The board may, in its discretion, employ and pay any licensed embalmer on a per diem basis and necessary expenses incident to such employment in such amount as shall be fixed by the board, for the purpose of investigating and reporting to the board violations of the laws of the state of Montana in relation to embalming and funeral directing.

The treasurer of the board shall give bond to the state of Montana in such sum as the board shall direct, and such bond shall contain two (2) or more sureties, or in a reliable surety company approved by the board, and such bond shall be conditioned for the faithful discharge of the duties of such officer. Such bond, with the oath of office and the approval of the board endorsed thereon, shall be deposited with the treasurer of the state of Montana.

History: En. Sec. 2, Ch. 67, L. 1941.

82-703. Qualifications to secure licenses for embalming—fee—interne or apprentice—license—fees. Any person desiring to practice embalming in the state of Montana must be possessed of the following qualifications:

- (1) Must be at least twenty-one (21) years of age;
- (2) Must be of good moral character;
- (3) Must present to the board a diploma of graduation from high school, and in addition shall be a graduate of a grade "A" embalming college.

Any person possessed of such qualifications may apply to the board for a license, and upon payment of an application fee of twenty-five dollars (\$25.00), may take the examination prescribed by the board. The board shall prepare the form of examination and relating questions, and shall, in all respects conduct said examination and grant or refuse licenses, based upon the examination held. Said examination shall be held annually, at the city of Helena, Montana, on the second Wednesday in July of each and every year. An applicant who shall pass said examination shall be granted a license to practice as an interne and apprentice embalmer under a licensed embalmer of the state of Montana, and at the end of one (1) year's internship and apprenticeship shall have a right to apply for a final license as an embalmer; provided, however, that in cases of emergency or when the board may deem it advisable and for the best interests of the public, the board may, in its discretion, grant to any person possessing the qualifications in this section provided, or to any regularly licensed embalmer in a state other than Montana, written permission, which shall entitle such person to carry on the profession of embalming until the next regular examination, or until such permission is revoked by the board, provided the board may at any time, in its discretion, revoke such permission. Such application shall be made to the board, and if the board finds that such applicant has fully complied with the law and the rules and regulations of the board, he shall be granted a license to engage in the profession of embalming in the state of Montana. No person shall carry on the profession of embalming, or act as an interne or apprentice without a license. The annual license fee payable to the board of an interne and apprentice shall be two dollars and fifty cents (\$2.50). The annual renewal license fee, payable to the board, on the 1st day of July of each and every year, shall be as follows: For an interne and apprentice, two dollars and fifty cents (\$2.50); for an embalmer, five dollars (\$5.00); for a funeral director, two dollars (\$2.00); provided, however, that the provision regarding internship and apprenticeship shall not apply to an applicant who at the time of examination is duly licensed and has served his apprenticeship under the laws of any other state.

An interne and apprentice is hereby defined to be a person possessed of the qualifications provided by this section for the practice of embalming

and who has taken and successfully passed the examination herein provided for embalmers.

History: En. Sec. 3, Ch. 67, L. 1941;
amd. Sec. 1, Ch. 151, L. 1943.

82-704. Funeral director—qualifications—application for license—fee—examination. Any person desiring to become a funeral director must possess the following qualifications:

- (1) Must be over the age of twenty-one (21) years;
- (2) Must be of good moral character;
- (3) The applicant shall, before application is granted, successfully pass an examination upon the following subjects: burial permits and returns, funeral directing, sanitary science, health and sanitary regulations, the laws governing the preparation, disposal and transportation of dead human bodies, and the shipment of bodies of persons dying from infectious or contagious diseases.

(4) Any person possessed of such qualifications may apply to the board for a funeral director's license, and upon the payment of an application fee of twenty-five dollars (\$25.00), may take the examination prescribed by the board.

(5) No persons shall carry on the profession of funeral director without a license.

The board shall prepare the form of examination and related questions and shall, in all respects, conduct said examination and grant or refuse licenses, based upon the application and upon the examination held. Said examination shall be held annually at the city of Helena, Montana, annually, on the second Wednesday of July of each and every year.

History: En. Sec. 4, Ch. 67, L. 1941.

82-705. Definitions. That for the purposes of this act, the term "embalming" shall be construed to mean the preservation and disinfection of the dead human body by application of chemicals externally, or internally, or both. The term "funeral directing" or "funeral director" as used in this act shall be construed to mean the profession of supervising funerals, or the profession of preparing dead human bodies for burial, other than by embalming, or the disposition of dead human bodies; or the provisions or maintenance of a place for the preparation for disposition or for the care or disposition of dead human bodies, or the use in connection with a business of the word or term from which can be implied the business of funeral directing; or the holding out to the public that one is a funeral director.

History: En. Sec. 5, Ch. 67, L. 1941.

82-706. Violation a misdemeanor—embalming without license forbidden—re-examination, date, renewal. Any person desiring to engage in the profession of embalming or funeral directing, or both, as defined in this act, shall make application to the board and conform to the provisions of this act, and the rules and regulations of the board.

Every person, firm, or corporation violating any of the provisions of this act shall be guilty of a misdemeanor.

No person shall carry on the profession or discharge any of the duties of embalming or funeral directing, or act as an interne or apprentice, as

defined in this act, unless a license has been issued to him, and unless he shall have fully complied with the provisions of this act. Such license shall be signed by the president and the secretary of the board, to which license shall be affixed the seal of said board, and such license or licenses shall be non-transferable and non-negotiable. Such license shall be registered by the holder or owner with the state department of health.

Any person now holding a license granted by any authority of this state to carry on the profession of embalming shall not be required to make a new application, or submit to an examination, but shall be entitled to renewal of his license upon the same terms and conditions as are herein provided for the renewal of licenses of those who may be licensed after the passage of this act, but all such persons shall be subject to every other provision of this act and such rules and regulations as the board may adopt in pursuance of this act.

All persons now, and for more than one (1) year prior to the passage of this act, engaged in funeral directing, as herein defined, shall not be required to make a new application or submit to any examination, but shall be entitled to a renewal license, upon the same terms and conditions as are herein provided for the renewal of licenses of those who may be licensed after the passage of this act. Provided further, that persons licensed to engage in embalming shall be entitled, upon application, to receive a license, upon payment of two dollars (\$2.00) annual license fee, to engage in the profession of funeral directing, but no funeral director, by reason of his license as such, shall engage in the profession of embalming as defined herein.

History: En. Sec. 6, Ch. 67, L. 1041.

82-707. Registration of internes and apprentices. Every person employed as an interne and apprentice by any person or persons engaged in the profession of embalming shall be by such embalmer registered with said board at the time of the beginning of said internship or apprenticeship, and notice of the termination of the same must likewise be forwarded to the secretary of the board; such registration shall also be made once in every year by the employer of such interne or apprentice at the time of the renewal of the license of the employer. A fee of one dollar (\$1.00) shall be paid for such registration.

History: En. Sec. 7, Ch. 67, L. 1941.

82-708. Denial of new licenses, reasons—proviso—charges and hearing—appeals. The board may refuse to grant, may suspend or may revoke any license granted to any person for any of the following reasons:

(1) If the applicant therefor or holder thereof obtained said license by fraud or misrepresentation, either in the application for such license, or in passing the examination therefor;

(2) If the applicant therefor or holder thereof has been convicted of a felony;

(3) If the applicant therefor or holder thereof has been guilty of wilfully violating any section of this act or any rule or regulation of the state, district, or local board of health governing the disposition of dead human bodies.

(4) If the holder has promoted or is promoting or has participated in, or is participating in any scheme in the nature of a burial association or burial certificate plan wherein the rights of the public are not properly protected, or wherein there is any element of fraud, or wherein there is contained any agreement or provision that deprives heirs or next of kin of freedom of choice as to the type, style, or price of equipment used in connection with a funeral, or the freedom of choice as to what funeral director shall be employed. Provided that nothing herein contained shall be construed so as to prevent any such holder from performing his obligations under any contract executed prior to the effective date of this act, provided further that no person shall be refused a license, or have his license suspended or revoked by reason of his employment, intended employment, affiliation or participation with any incorporated cooperative funeral association, and this section shall in no way limit the right of any and all persons to form, conduct and operate an incorporated cooperative funeral association.

No action to suspend, revoke, or cancel any license shall be taken by the board until the accused has been furnished with a statement of the charges against him and notice of the time and place of hearing thereof, the furnishing of such notice and the charges to be given said accused at least thirty (30) days prior to the date of hearing. If, upon such hearing, the board finds the charges true, it may revoke or suspend the license of the accused person. A stenographic report of each proceeding to revoke or suspend the license shall be made at the expense of the board and a transcript thereof kept in its files, and a copy of such transcript shall be furnished to the person so charged and accused.

Any person who has been refused a license or whose license has been revoked or suspended, may file with the secretary of the board, within thirty (30) days after the decision of the board, a written notice of appeal therefrom to any district court of the state of Montana, and such court shall be limited in its proceedings therein to a determination as to whether the action of the board was in accord or consistent with this act or the constitution of this state, or was arbitrary or an abuse of discretion. Upon the filing of such notice, the secretary of the board shall transmit to the clerk of such court the record of such proceedings. The judgment of any such district court of the state of Montana, may, in the manner provided for appeal of civil action, be reviewed upon proceedings on appeal in the supreme court.

History: En. Sec. 8, Ch. 67, L. 1941.

82-709. Disposition of fees collected. All fees collected under the provisions of this act shall be paid to the treasurer of the board and by him deposited monthly with the treasurer of the state, in a special fund for the exclusive use of the board, and such fees shall be used for the purposes of defraying the necessary expenses of said board in the administration of this act.

History: En. Sec. 9, Ch. 67, L. 1941.

82-710. Interpretation of act. In the interpretations of this act, words in the masculine gender include the feminine and neuter genders. Whenever

the word "board" is used in this act, it shall be construed to mean and refer to the board of embalmers and funeral directors of the state of Montana.

History: En. Sec. 11, Ch. 67, L. 1941.

82-711. Certain students not affected by act. The provisions of this act relative to the qualifications of persons to become embalmers shall not apply to, or be deemed to affect bona fide residents of the state of Montana, who shall be enrolled as students in a grade "A" embalming college at the time this act goes into effect, and such persons shall have the qualifications now required to become an embalmer, and shall be licensed in the manner as is now required by law.

History: En. Sec. 12, Ch. 67, L. 1941.

CHAPTER 8

ENTOMOLOGIST, STATE—DUTIES AS TO AGRICULTURE

- Section 82-801. State entomologist of Montana.
 82-802. Duties of state entomologist.
 82-803. Annual report.
 82-804. Expenses.
 82-805. Definitions.
 82-806. Powers and duties of state apiarist.
 82-807. Registration.
 82-808. Registration fees.
 82-809. Inspection of used or secondhand beekeeping equipment transported into the state.
 82-810. Importation of bees in combless packages.
 82-811. Disposition of fees.
 82-812. Penalties.
 82-813. Separability of act.
 82-814. Orders effective until reversed or modified by court.

82-801. (913) State entomologist of Montana. The entomologist of Montana agricultural college and experiment station shall be known as the state entomologist of Montana.

History: En. Sec. 1, Ch. 59, L. 1903; States 44.
 re-en. Sec. 1, Ch. 103, L. 1907; Sec. 766, 59 C.J. States §§ 103 et seq., 115.
 Rev. C. 1907; re-en. Sec. 913, R. C. M. 1921.

82-802. (914) Duties of state entomologist. It shall be the duty of state entomologist to conduct field investigations of the injurious insects of fruits, vegetables, grains, grasses, forage, crops, including clover and alfalfa, root crops, shade trees, ornamental plants, and any other insects that may become injurious. When it becomes known to the state entomologist that an outbreak of an insect has occurred in any part of the state, it shall be his duty, so far as is possible without conflicting with his other duties, to go to the scene of the outbreak or send a suitably qualified assistant. The state entomologist or said assistant shall determine the extent and seriousness of the outbreak, and, when necessary, publish or make public demonstration of the best remedies to be employed.

History: Ap. p. Sec. 2, Ch. 59, L. 1903; Cross-Reference
 en. Sec. 2, Ch. 103, L. 1907; Sec. 767, Rev. Destruction of insect pests, duties, sec.
 C. 1907; re-en. Sec. 914, R. C. M. 1921. 16-1149.

States 73.
 59 C. J. States § 143½.

82-803. (915) Annual report. The entomologist shall make an annual report to the governor of the state, on or before the first day of January, which report shall be published by the experiment station as one of its regular bulletins, and shall contain a report of his work and expenditures under this act.

History: En. Sec. 3, Ch. 59, L. 1903;
re-en. Sec. 3, Ch. 103, L. 1907; Sec. 768,
Rev. C. 1907; re-en. Sec. 915, R. C. M. 1921.

82-804. (916) Expenses. The state entomologist shall receive no compensation for his services other than what he may receive from the college of agriculture and mechanic arts and experiment station but such office or laboratory expenses and such salaries of necessary assistants, together with such traveling expenses as result from the work contemplated under this act, not to exceed such sums as the legislature from time to time may appropriate, shall be paid, and upon certification of the secretary of the executive board of the college of agriculture and mechanic arts and director of the agricultural experiment station, the state auditor is authorized to issue warrants to cover the same. The actual traveling expenses of the state entomologist and the actual traveling expenses and salary of his assistant, which shall result from the work contemplated under section 16-1152, shall be paid by the county or counties wherein such work is contemplated or carried on, and upon presentation and allowance of a sworn claim against such county or counties, warrants in payment thereof shall be drawn upon the general fund of such county or counties. The board of county commissioners shall annually determine the amount of such warrants drawn upon the general fund for the purposes of this act, and shall include such amount in the tax levied the succeeding year for the purpose of insect pest extermination and reimburse the general fund for money so paid out on such warrants as is provided in section 16-1152.

History: En. Sec. 4, Ch. 59, L. 1903; States 60.
amd. Sec. 4, Ch. 103, L. 1907; Sec. 59 C.J. States, §§ 58, 249 et seq.
769, Rev. C. 1907; re-en. Sec. 916, R. C. M.
1921; amd. Sec. 1, Ch. 114, L. 1925.

82-805. Definitions. The following terms shall be construed respectively to mean:

(a) "Apiary"—Any place where one (1) or more colonies of bees are kept, or one or more hives containing honey combs or bee combs are kept.

(b) "Equipment"—Hives, supers, frames, veils, gloves or any apparatus, tools, machines or other devices used in the handling and manipulation of bees, honey, wax, and hives, and shall also include any containers of honey and wax which may be used in any apiary or in transporting bees and their products and apiary supplies.

(c) "Hive"—Frame hive, box hive, box, barrel, log gum, skep, or any other receptacle or container, natural or artificial or any part thereof, which may be used as a domicile for bees.

(d) "Bees"—Any stage of the common honey bee, *Apis mellifera*.

(e) "Bee diseases"—American or European foulbrood, sacbrood, bee paralysis, or any other disease or abnormal condition of egg, larval, pupal or adult stages of bees.

(f) "Colony"—The hive and all equipment used in connection therewith.

(g) "Persons"—Individuals, associations, partnerships or corporations.

(h) "Queen Apiary"—Any apiary or premises in which queen bees are reared or kept for sale or gift.

Words used in this act shall be construed to import either the plural or singular, as the case demands.

History: En. Sec. 1, Ch. 79, L. 1947.

82-806. Powers and duties of state apiarist. The state entomologist is hereby designated as the state apiarist and for the purpose of preventing the spread of contagious and infectious disease among bees and apiaries, the state apiarist, or any deputy appointed or employed by him, shall have the following powers:

1. To order the transfer of colonies of bees from hives or containers which cannot be properly examined for brood or other diseases to other hives or containers.

2. To order the burning of, or to burn, any infected or contaminating bees, bee hives, brood combs, or any other equipment, which, in his judgment, is so infected or contaminated that disinfection thereof will not destroy the infection or contamination.

3. To order disinfection of any bee, bee hive, brood comb or any other equipment which is infected or contaminated and with full power to order the burning of, or to burn, any bee, bee hive, brood comb, or any other equipment, if, in his judgment, disinfection will not remove the infection or contamination, provided, however, before burning any such property, the state apiarist, or his deputy, shall give the owner of, or person in charge thereof, a written notice at least five (5) days prior to the date on which said property will be burned. This notice to be given by registered mail or personally served upon the owner of, or person in charge of, such property.

4. To quarantine any apiary where foulbrood or any contagious or infectious diseases are present and, during such quarantine, to prevent the removal from such apiary, of any bees or equipment excepting under authority of a special permit issued by the state apiarist, or his deputy, permitting such removal under conditions and regulations to be prescribed by him. No person shall sell, or offer for sale, any apiary, bees or equipment while the same is under quarantine unless a permit authorizing such sale or removal is made by the state apiarist. Written notice of quarantine shall be posted by any officer at such quarantined apiary at a conspicuous place and a copy thereof shall be personally served or sent by registered mail to the owner of such apiary or person in charge thereof, and such quarantine shall continue in effect until it is ordered removed and a copy of such removal served in the same manner.

5. To inspect any honey house or building or portion of building or container in which honey is stored, graded or processed, and determine whether or not any unsanitary conditions exist. If it is found that unsanitary conditions exist or are permitted to exist, the owner or person in charge shall be notified in writing to place such honey house, building or portion of building or container in a sanitary condition within a reasonable

length of time, and any operator or owner of such honey house, building or container failing to obey such notice shall be guilty of a misdemeanor and shall be punished as provided in this act.

History: En. Sec. 2, Ch. 79, L. 1947.

82-807. Registration. It shall be unlawful for any person, firm or corporation in the state of Montana to possess or own an apiary without registering the same as hereinafter provided. Every person, firm or corporation who shall own or possess in the state of Montana an apiary shall, within sixty (60) days from and after the passage and approval of this act, and on or before the first day of April each year hereafter, cause the same to be registered in the following manner:

1. Applications shall be made to the state apiarist for registration blank.
2. Registration blanks shall be furnished by the state apiarist, which blank shall contain a statement of the name, place of residence, place of business, of the owner, together with the number of colonies of bees, hives and equipment in such apiary, and the location in the state, setting forth specifically the location by sectional division to the nearest quarter section, and the township and range, and if within the corporate limits of a town or city, by setting forth the number of the lot and block in such town or city and stating also the name of the owner, renter and/or occupant of the land whereupon such apiary is located, and give such other information as the state apiarist may require under rules and regulations established by him for the protection, safety and welfare of the public and beekeeping industry. The registration blanks shall also include the date when the location was first established.

If additional colonies of bees are added to the apiary by purchase or any means other than natural increase, after the registration of the apiary, a report thereof shall be made to the state apiarist within thirty (30) days setting forth the number of additional colonies added to the apiary.

3. Upon receipt of such application, and payment of the fees herein after prescribed, the state apiarist shall be authorized to issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location and the number of colonies of bees or size of the apiary authorized under such registration.

4. In issuing certificates of registration for apiaries established and registered as now provided by law, if there is a conflict between applicants with respect to location, the state apiarist shall give preference to the applicant having the oldest continuous established location.

5. Certificates of registration shall not be issued for new locations of apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease, or that such proximity will or may interfere with the proper feeding and honey flow of such established apiaries.

6. Before authorizing the establishment of new locations, the state apiarist shall give notice of at least ten (10) days by registered letter to all registered apiarists likely to be affected by the proposed new location so that any party affected may file written protests with the state apiarist against authorizing such new locations. In the event a written protest is

filed, the state apiarist may require a hearing and notice of the time and place of such hearing shall be given all parties interested by registered mail at least ten (10) days before the date set for the hearing. Any party dissatisfied with the order of the state apiarist may bring an action in the district court of the county where the proposed location is located, within fifteen (15) days, to set aside or modify the order of the state apiarist. In the event such action is not brought within fifteen (15) days, the order of the state apiarist shall be final and conclusive upon the parties to the proceedings.

7. It shall be unlawful for the owner of any established registered apiary to change locations without first receiving from the state apiarist a permit to establish such new location. In making such application he shall specify the location with the same particularity as in the application or original registration. If such new location is not used within sixty (60) days after a permit is issued, then such permit shall lapse and all right thereunder shall terminate. Provided further that permits for new locations shall not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

8. The certificate of registration issued pursuant hereto shall be posted in a conspicuous place at or near the location of his colony of honey bees or beehives, and in the event one owner has more than one location, he shall obtain a duplicate of his original registration certificate and the same shall be posted at each location. Such duplicate registration certificate shall have printed across the face thereof the word "Duplicate".

History: En. Sec. 3, Ch. 79, L. 1947.

82-808. Registration fees. Each year before a certificate of registration shall be issued for any apiary, the owner or applicant for such certificate shall pay to the state apiarist a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed by each applicant, firm or corporation in the state of Montana:

1 to 10 colonies of bees	\$ 1.00
11 to 50 colonies	2.50
51 to 200 colonies	5.00
201 to 300 colonies	7.50
301 to 400 colonies	10.00
401 to 500 colonies	20.00
501 colonies and upward	25.00

If, after the registration is made for the ensuing year, additional or new colonies are added, the same shall be reported as in this act provided and fees shall be paid in accordance with the above schedule for the total number of colonies for that year. Provided further that a fee of three dollars (\$3.00) yearly shall be charged for the registration of any apiary not coming within the schedule above set forth.

History: En. Sec. 4, Ch. 79, L. 1947.

82-809. Inspection of used or secondhand beekeeping equipment transported into the state. It shall be unlawful to transport or bring into the state of Montana any used or secondhand hives, honey combs, frames or

other used or secondhand beekeeping equipment without first having the same inspected by the state apiarist, or his deputy, and obtaining from him a certificate of inspection showing that the same is apparently free from contagious or infectious disease. The cost of making such inspection shall be paid by the person requesting the same and inspection may be made at any point outside the state of Montana convenient to the person making the inspection. The state apiarist may require that the costs of making such inspection be paid in advance and such costs shall include a per diem of ten dollars (\$10.00) and all necessary traveling expense, and a fee of five dollars (\$5.00) for the issuance of the certificate of inspection.

History: En. Sec. 5, Ch. 79, L. 1947.

82-810. Importation of bees in combless packages. It shall be unlawful to transport or bring into the state of Montana bees in combless packages unless the same are accompanied by a certificate of health issued by the official inspector of the state or country from whence they came. The transportation of bees into this state without said certificate of health by any person or persons or by any common carrier or by any method of transportation shall be a violation of the provisions of this act and punished as hereinafter provided.

History: En. Sec. 6, Ch. 79, L. 1947.

82-811. Disposition of fees. All registration fees and inspection fees collected under the provisions of this act shall be transmitted by the state apiarist to the state treasurer, who shall deposit the same to the credit of the general fund of the state.

History: En. Sec. 7, Ch. 79, L. 1947.

82-812. Penalties. Any person, firm or corporation violating any of the provisions of this act shall be deemed guilty of a misdemeanor and punished by a fine of not less than twenty-five dollars (\$25.00) nor more than five hundred dollars (\$500.00), or by imprisonment in the county jail not exceeding one (1) year, or by both such fine and imprisonment.

History: En. Sec. 8, Ch. 79, L. 1947.

82-813. Separability of act. If any clause, sentence, section, paragraph, part or portion of this act shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, unconstitutional or inoperative, such judgment shall not affect, impair or invalidate the validity of the act as a whole, or the remainder of this or any part thereof which can be given effect, but shall be confined in its operation to the particular clause, sentence, section, paragraph, part or portion directly adjudged to be so invalid, unconstitutional or inoperative.

History: En. Sec. 9, Ch. 79, L. 1947.

82-814. Orders effective until reversed or modified by court. Until reversed or modified by a court of competent jurisdiction any order or regulation made and promulgated by the state apiarist, including any order refusing permit for the establishment of a new apiary location, shall be effective until reversed or modified by a final decision, or final judgment, and while such action is pending, (section 93-8706); and no injunction or

other process or writ shall be issued or made by any court restraining such enforcement until such final determination.

History: En. Sec. 10, Ch. 79, L. 1947.

CHAPTER 9

ENUMERATION OF CERTAIN EX OFFICIO STATE OFFICERS

- Section 82-901. Board of examiners.
 82-902. State prison commissioners.
 82-903. Board of pardons.
 82-904. Board of land commissioners.

82-901. (116) Board of examiners. The governor, secretary of state, and attorney general constitute a board of examiners.

History: En. Sec. 346, Pol. C. 1895; States 45.
 re-en. Sec. 134, Rev. C. 1907; re-en. Sec. 59 C.J. States § 149.
 116, R. C. M. 1921.

82-902. (117) State prison commissioners. The governor, secretary of state, and attorney general constitute a board of state prison commissioners.

History: En. Sec. 347, Pol. C. 1895; Prisons 6.
 re-en. Sec. 135, Rev. C. 1907; re-en. Sec. 50 C.J. Prisons § 11 et seq.
 117, R. C. M. 1921.

82-903. (118) Board of pardons. The secretary of state, attorney general, and state auditor constitute the board of pardons.

History: En. Sec. 348, Pol. C. 1895; Pardon 5.
 re-en. Sec. 136, Rev. C. 1907; re-en. Sec. 46 C.J. Pardon § 12.
 118, R. C. M. 1921.

82-904. (119) Board of land commissioners. The governor, superintendent of public instruction, secretary of state, and attorney general constitute the state board of land commissioners.

History: En. Sec. 349, Pol. C. 1895; States 45.
 re-en. Sec. 137, Rev. C. 1907; re-en. Sec. 51 C.J. Public Lands §§ 183 et seq., 648.
 119, R. C. M. 1921.

CHAPTER 10

EXAMINER, STATE

- Section 82-1001. Appointment and term of office.
 82-1002. Duties of state examiner.
 82-1003. Publication of examiner's report to counties—entering in commissioners' minutes.
 82-1004. Duty of state and county officers to aid in examination.
 82-1005. Power to examine books and papers.
 82-1006. Failure of county officers to transmit statements to state examiner—penalty.
 82-1007. Access to accounts of public officers—actions to compel.
 82-1008. Examination of accounts of cities, towns and school districts of the first and second class.
 82-1009. Laws applicable to such examinations.
 82-1010. Entering examiner's report in minutes of city or town—publication.
 82-1011. Salary and expenses.
 82-1012. Assistants, deputies and clerks—salaries.
 82-1013. Bonds of state examiner and assistants.

82-1001. (209) Appointment and term of office. There shall be a state examiner who shall be appointed by the governor and confirmed by the

senate, and shall hold his office for the term of four years and keep his office at the capitol.

History: En. Sec. 490, Pol. C. 1895; it must be strictly construed. State v. re-en. Sec. 1, p. 105, L. 1897; re-en. Sec. 1, Aetna Banking & Trust Co., 34 M 379, Ch. 100, L. 1903; re-en. Sec. 208, Rev. C. 382, 87 P 268. 1907; re-en. Sec. 209, R. C. M. 1921.

Operation and Effect

States 46, 51.

This act being of a highly penal nature,

59 C.J. States § 149.

82-1002. (210) Duties of state examiner. The duties of the state examiner and his assistants are:

1. To examine at least once in each year the books and accounts of the state treasurer, state auditor, secretary of state, clerk of the supreme court, state game warden, register of state land office, and all other state officers having the collection or handling of state money, county treasurers, county clerks, county assessors, district court clerks, county auditors, sheriffs, public administrators, boards of county commissioners of each county, and all other officers and boards whether temporary or permanent, however created and for whatever purpose, having the control, management, collection or disbursement of any public moneys of any character or description.

2. To prescribe the general methods and details of accounting for the receipt and disbursement of all moneys belonging to the counties, cities, towns, or school districts, and the educational, charitable, penal, and reformatory institutions of the state of Montana, and to establish in all such offices such general methods and details of accounting as are required by law or are prescribed by the state examiner, and all county, city, town or school district officers, and officers of educational, charitable, penal and reformatory institutions of the state of Montana are hereby compelled to conform therewith.

3. To examine at least once each year the books and accounts of the treasurer and secretary of each and all of the educational, charitable, penal and reformatory institutions of the state of Montana, and to examine into the financial affairs and conditions of each and all of said institutions.

4. To visit each and every office of the officers, boards and institutions named in this act at least once in each year; and at such time to examine the books, accounts and vouchers in said office, to verify statements of receipts and expenditures, and indebtedness, and to examine and pass upon the character and amounts of any commissions, percentage, or charges for services, exacted by any officer, and of all claims allowed by any of said officers, boards or institutions.

5. To visit twice each year, or oftener, without previous notice, each of the banks, banking corporations and savings banks, building and loan associations, investment and loan companies incorporated under the laws of this state, or doing business under any law of the state concerning corporations, and to examine into their affairs and ascertain their financial condition; to inspect and verify the value and the amount of their securities and assets, and to inquire into any violation of laws governing such banks, institutions, building and loan associations.

6. The state examiner, after examination of the affairs of any state officer, board, or institution, or board of county commissioners, must make report to the governor and to the attorney general of the result of such examination, within sixty days thereafter; and if any violation of law or non-performance of duty is found on the part of any such officer or board, they must be proceeded against by the attorney general or county attorney as provided by law.

7. The state examiner, or his assistants, after the examination of the affairs of any county officers, must make report of such examination to the board of county commissioners and to the county attorney of such county, within thirty days after such examination; and if any violations of law or non-performance of duty is found on the part of any county officer or board, such officer or board must be proceeded against by the county attorney of the county as provided by law.

8. The state examiner must make an annual report to the governor immediately after the end of each fiscal year, but such report must not be printed unless the printing thereof be ordered by the state board of examiners.

9. It shall be the duty of the county attorneys of the various counties of the state of Montana and the city attorneys of the various cities and towns of the state of Montana to make report to the state examiner within thirty days after receiving from the state examiner the report of any examination of any county, city or town, as to what proceedings he has instituted or is intending to institute relating to violations of law and non-performance of duty, as set forth in the report of the state examiner.

10. If any county or city attorney refuses or neglects to notify the state examiner within thirty days after receiving the report of any examination of any county, city or town, as to what proceedings he has instituted or is about to institute against any officer for violations of law or non-performance of duty, as evidenced by matters of record, and as set forth in the state examiners report; the state examiner may withhold the salary of such county or city attorney by filing notice with the proper officials, until proper and satisfactory explanation has been made to the state examiner for such non-performance of duty, provided further, that should the county or city attorney fail or refuse to prosecute such cases, the state examiner may employ an attorney to prosecute such case at the expense of the county, city, or town.

History: Ap. p. Sec. 491, Pol. C. 1895; amd. Sec. 1, p. 105, L. 1897; amd. Sec. 491, Ch. 100, L. 1903; re-en. Sec. 209, Rev. C. 1907; re-en. Sec. 210, R. C. M. 1921; amd. Sec. 1, Ch. 78, L. 1923.

NOTE.—Section 5-901 requires only annual visits to banks.

Cross-References

City budgets filed with, sec. 11-1406.

Conservation revolving fund, duties, sec. 89-403.

County budgets, duties, sec. 16-1901 et seq.

Irrigation districts, duties, sec. 89-2107.

State department of public welfare, audit of receipts and disbursements, sec. 71-206.

Title insurance companies, duties, sec. 40-2308.

Operation and Effect

A report of the deputy state examiner as to the result of his investigation of a county office is not a public or official book or record within the meaning of section 93-1001-32, making entries in public or other official books or records made by a public officer prima facie evidence of the facts therein stated, and inadmissible in a prosecution of the officer for larceny

of public funds, especially where it is based not only upon books and records, but upon affidavits. *State v. Ray*, 88 M 436, 442, 294 P 368.

Id. The report required to be made by the state examiner or his assistants after the examination of the affairs of a county officer to the board of county commissioners under subdivision 7 of this section, is merely intended for the guidance of the latter officers, and, in itself, is not a source of evidence as to the facts stated therein.

Held, that since the state examiner is by law required to examine the books of account of all county officers having to do with its financial affairs and report his findings to the board of county commissioners, the board is without power, express or implied, to enter into a contract with an accountant under which the latter, at a monthly compensation of \$150, agreed to audit the books of the county for a period of years, make reports at stated inter-

vals and render assistance to the board as well as the county officers in connection with county affairs, the effect of the contract being a usurpation of the examiner's functions and an interference with his duties. *Judith Basin Co. v. Livingston et al.*, 89 M 438, 442, 298 P 356.

Id. Held, that if the examination of county books required to be made by the state examiner is not as comprehensive as one made by an individual, or is inadequate, or if it is desirable that more frequent examinations be had than the law requires of the state examiner, the remedy lies with the legislature and not the courts, who must take the law as it is written.

District and Prosecuting Attorneys—8; Municipal Corporations—170; States—73.

27 C.J.S. District and Prosecuting Attorneys §§ 10, 14; 43 C.J. Municipal Corporations §§ 1193, 1210; 59 C.J. States § 149.

82-1003. (210.1) Publication of examiner's report to counties—entering in commissioners' minutes. Upon the receipt of the state examiner's report covering the examination of the affairs of any county, it shall be the duty of the board of county commissioners of such county, to have such report entered and made a part of the minutes of the next regular meeting of such board; provided such report shall not be published by the board of county commissioners as a part of the minutes of its proceedings. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the county commissioners, send a like copy to the official newspaper of the county for publication. Such publication shall be had once in the official newspaper forthwith, and shall be a charge against the county at the same rate as provided for in the contract for county printing for proceedings of the county commissioners.

History: En. Sec. 1, Ch. 30, L. 1923; amd. Sec. 1, Ch. 85, L. 1925; amd. Sec. 1, Ch. 81, L. 1927.

Counties—53; States—73.

20 C.J.S. Counties § 91; 59 C.J. States § 123 et seq.

References

State v. Ray, 88 M 436, 443, 294 P 368.

82-1004. (211) Duty of state and county officers to aid in examination. All officers of the state and counties, and all officers and employees of all banking and other institutions mentioned in this act, must afford all reasonable facilities for the investigation provided for in this act, and all such officers, managers, and employees must make return and exhibits to the state examiner under oath, in such form and in such manner as he may prescribe, not conflicting with the provisions of this section is guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by fine not exceeding five hundred dollars or both.

History: En. Sec. 492, p. 107, L. 1897; re-en. Sec. 492, Ch. 100, L. 1903; re-en. Sec. 210, Rev. C. 1907; re-en. Sec. 211, R. C. M. 1921.

Obstructing Justice—7; States—73.
59 C.J. States § 149.

82-1005. (212) Power to examine books and papers. The state examiner or his assistant has power to examine any books, papers, accounts, and documents in the office or possession of any county or state officer, or banking or other institution referred to in this act, and to send for persons or papers and to examine under oath any and all persons concerning the same.

History: Ap. p. Sec. 494, Pol. C. 1895; States 73.
amd. Sec. 493, p. 107, L. 1897; amd. Sec. 59 C.J. States § 149.
493, Ch. 100, L. 1903; re-en. Sec. 211, Rev.
C. 1907; re-en. Sec. 212, R. C. M. 1921.

82-1006. (213) Failure of county officers to transmit statements to state examiner—penalty. If any county clerk or county treasurer shall fail to make and transmit to the state examiner's office any copy of any quarterly report required by the state examiner, within ten days after the end of a quarter, or any annual financial statement of the county within twenty days after end of fiscal year, then said officer so required to furnish such report or copy shall forfeit to the county one hundred dollars to be deducted from his salary by the board of county commissioners of such county on notice of such failure from the state examiner.

If any officer refuses or neglects to comply with any lawful regulation prescribed by the state examiner, under authority of paragraph 2 of section 82-1002, the salary of such officer shall, on request of the state examiner, to the proper official, be withheld until such recreant official obeys, and the state examiner certifies approval to the disbursing officer.

History: Ap. p. Sec. 494, p. 107, L. Counties 74(2, 3).
1897; amd. Sec. 494, Ch. 100, L. 1903; amd. 20 C.J.S. Counties §§ 117, 119; 59 C.J.
Sec. 1, Ch. 149, L. 1907; Sec. 212, Rev. C. States § 149.
1907; re-en. Sec. 213, R. C. M. 1921.

82-1007. (214) Access to accounts of public officers—actions to compel.
(1) The state examiner shall have full power and authority to count the cash, verify the bank accounts and verify any and all accounts of any public officer whose accounts he is examining pursuant to law.

(2) Any state, county, city, town or school district officer who shall refuse to accord the state examiner access during an examination of such officer's accounts, to his cash, bank accounts, or any of the papers, vouchers or records of his office, or if the state examiner, after counting the cash and verifying the bank accounts of such officer shall find that a shortage exists in the accounts of said officer, the state examiner shall forthwith file a verified preliminary report showing the refusal of such officer to accord to him access to the examination of such accounts, cash, bank accounts, papers, vouchers or records, or the existence of such shortage, and the amount or approximate amount thereof with the secretary of state if such officer shall be a state officer, with the board of county commissioners of the proper county if the officer be a county or school district officer, and with the city or town council if the officer be a city or town officer; upon the filing of such verified statement, such officer shall immediately be suspended from the duties and emoluments of his office, and the governor, in the case of a state officer, and the board of county commissioners of the county in case of county or school district officers, and the city or town council in

case of a city or town officer, shall appoint some qualified person to such office, pending the completion of such examination.

(3) Upon the completion of the audit or examination of the accounts of such officer by the state examiner, if a shortage shall be found to have existed in the accounts of such officer on the date of the commencement of such examination, the state examiner shall file, in the office of the secretary of state in case of a state officer, and the board of county commissioners of the proper county in the case of a county or school district officer, and with the city or town council in the case of a city or town officer, a verified final report of the examination or audit, showing such shortage, whereupon the right of such officer to such office shall be forfeited, and such office shall thereupon become vacant as of the date of the suspension of such officer as hereinabove provided, and the person appointed to such office upon the suspension of said officer shall hold said office until the election and qualification of his successor, as provided by law.

(4) Any officer whose right to office has been forfeited may, within ten days after the filing of the state examiner's final report or audit as herein provided, institute in the district court of the proper judicial district, a proceeding in quo warranto to test the right of his successor to hold such office, and the accuracy of the said final report and audit of the state examiner.

History: En. Sec. 1, Ch. 84, L. 1915; re-en. Sec. 214, R. C. M. 1921; amd. Sec. 1, Ch. 179, L. 1939.

Operation and Effect

This statute insofar as it declares an elective public office for a fixed term va-

cant on mere filing of a final verified report by state examiner showing a shortage in accounts in office without notice or hearing is invalid as denying due process of law. State ex rel. Ryan v. Norby, — M —, 165 P 2d 302, 303.

82-1008. (215) Examination of accounts of cities, towns and school districts of the first and second class. The state examiner in addition to the duties now imposed upon his office, shall have the power and authority and it shall be his duty, to make at least one examination each year of the books and accounts of all incorporated cities and towns and that it shall be his duty to examine the books and accounts of all school districts of the first and second class, in like manner as is now required by law for the examination of the books and accounts of state and county officers, provided that such examination shall be optional with the trustees of such district and shall be done only on their request. Provided, however, that the trustees of any school district must, during the month of June of each calendar year, notify the state examiner if such examination will be required, in which event it shall be the duty of the state examiner to make an examination of such school district during the fiscal year following receipt of said notice. If such school district request such examination a fee of fifteen dollars (\$15.00) per day per man together with actual transportation expense must be paid by such district into the state treasury and the state treasurer shall accredit such payment to the special examiners fund. An examination may be made of the accounts and records of any school district by a qualified certified public accountant of the state of Montana when deemed advisable by the board of trustees.

History: En. Sec. 1, Ch. 84, L. 1913; re-en. Sec. 215, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1937.

Right of State Examiner to Bring Proceeding to Remove School Trustee

Citing this section and sec. 82-1009, held, on application for writ of supervisory control to annul an order denying motion to dismiss an action brought by the state

examiner to remove a school trustee accused of charging and collecting illegal fees under sec. 94-5516, that there is serious doubt as to the statutory power of the state examiner to maintain the action. State ex rel. Galbreath v. District Court, 108 M 425, 431, 91 P 2d 424.

States⇌73.

59 C.J. States § 149 et seq.

82-1009. (216) Laws applicable to such examinations. That all laws now in force relative to the examination of the books and accounts of state and county officers, are, and the same are hereby declared to be applicable to the examination of the books and accounts of incorporated cities and towns, and to the books and accounts of school districts of the first and second class.

History: En. Sec. 2, Ch. 84, L. 1913; re-en. Sec. 216, R. C. M. 1921.

States⇌73.

59 C.J. States § 149 et seq.

82-1010. (216.1) Entering examiner's report in minutes of city or town—publication. Upon receipt of the state examiner's report covering the examination of the affairs of any incorporated city or town, it shall be the duty of the mayor and the members of the city council or city commission to have such report entered and made a part of the minutes of the next regular meeting. Provided, further, that the state examiner shall, at the time such report of examination is forwarded to the city or town officials, send a like copy to the official newspaper of the city or town for publication. Such publication shall be published in one issue of the aforesaid official newspaper forthwith and shall be a charge against the city or town at a rate to be agreed on but not to exceed that charged boards of county commissioners for the printing of the reports of the state examiner.

History: En. Sec. 1, Ch. 33, L. 1929.

43 C.J. Municipal Corporations § 789; 59 C.J. States § 149 et seq.

Municipal Corporations⇌100; States⇌73.

82-1011. (218) Salary and expenses. The salary of the state examiner for all services rendered in any capacity whatever shall be five thousand four hundred dollars per year, and in addition thereto the state shall pay the necessary office and traveling expenses of himself and assistants.

History: En. Sec. 1, Ch. 149, L. 1907; re-en. Sec. 213, Rev. C. 1907; amd. Sec. 1, Ch. 93, L. 1911; re-en. Sec. 218, R. C. M. 1921.

ner is fixed at \$5400 by Sec. 59, Ch. 89, L. 1927 (Sec. 5-605 of this code).

States⇌60.

59 C.J. States § 249.

NOTE.—The salary of the state exami-

82-1012. (219) Assistants, deputies and clerks—salaries. The state examiner shall be allowed one first assistant at a salary of three thousand dollars (\$3,000.00) per year, and not to exceed six (6) deputy examiners, each at a salary of not to exceed twenty-seven hundred dollars (\$2700.00) per year, and one clerk at a salary of fifteen hundred dollars (\$1500.00) per year.

History: En. Sec. 1, Ch. 149, L. 1907; Sec. 214, Rev. C. 1907; amd. Sec. 2, Ch. 93, L. 1911; re-en. Sec. 219, R. C. M. 1921;

amd. Sec. 1, Ch. 96, L. 1929; amd. Sec. 1, Ch. 180, L. 1939.

States 50, 53, 60, 61.

59 C.J. States §§ 58, 187, 188, 207, 249, 253.

82-1013. (223) Bonds of state examiner and assistants. The state examiner and his assistants may each be required to give an official bond in such sum as the board of examiners may fix; if required, said bond may be a surety company bond, in which event the cost of said bond shall be a part of the expenses of the office, and paid out of the appropriation for said expenses.

History: Ap. p. Sec. 496, Pol. C. 1895; amd. Sec. 499, p. 109, L. 1897; amd. Sec. 499, Ch. 100, L. 1903; amd. Sec. 499, Ch. 149, L. 1907; Sec. 217, Rev. C. 1907; re-en. Sec. 223, R. C. M. 1921.

NOTE.—See section 6-101.

States 48.

59 C.J. States § 202.

CHAPTER 11

EXAMINERS, STATE BOARD OF—STATE PRINTING CONTRACT AND SUPPLIES

- Section 82-1101. Board, how composed.
 82-1102. Meetings and officers.
 82-1103. Exchange of surplus commodities by state institutions—when permitted.
 82-1104. Prison made goods not affected.
 82-1105. Records.
 82-1106. Rules and regulations.
 82-1107. Witnesses.
 82-1108. Depositions.
 82-1109. Claims for which appropriations have been made.
 82-1110. Approval and warrant.
 82-1111. Disapproval of claims.
 82-1112. Claims provided for, but for which there is no appropriation.
 82-1113. Unsettled claims.
 82-1114. Time for meeting for action on unsettled claims.
 82-1115. Proof and examination of such claims.
 82-1116. Report on such claim.
 82-1117. Disqualifications.
 82-1118. Restrictions on power of board.
 82-1119. Appeals.
 82-1120. Auditor not to draw warrant for claims not audited.
 82-1121. Board may prevent payment of auditor's warrants.
 82-1122. Must examine books of auditor and treasurer.
 82-1123. Must make statement.
 82-1124. Auditor and treasurer must permit examination, etc.
 82-1125. Furnishing board.
 82-1126. Board of supplies.
 82-1127. Duties of such board.
 82-1128. Contracts must be advertised.
 82-1129. Contents of advertisement.
 82-1130. Awarding the contract.
 82-1131. Advertising for bids—when required—contracts—requirements—advertising.
 82-1132. Contents of advertisement.
 82-1133. Number of bids required—certified check to accompany bid.
 82-1134. Awarding contracts.
 82-1135. Cost plus system invalidates contracts.
 82-1136. State purchasing department not affected.
 82-1137. State printing—union label.
 82-1138. Penalty.
 82-1139. The bond.
 82-1140. Supplies may be classified.
 82-1141. Must be approved by governor and state treasurer.
 82-1142. For supplies for the legislative assembly.
 82-1143. Rooms for state officers.

- 82-1144. No officer to be interested in contracts.
- 82-1145. Board may employ clerical help for state officers.
- 82-1146. Contracts in excess of appropriation prohibited.
- 82-1147. Public works contracts may include provisions required by federal agencies.
- 82-1148. Compensation of assistants to civil executive officers.
- 82-1149. Establishment of prices for state printing.
- 82-1150. Basis of measurement.
- 82-1151. Lower rates permissible.
- 82-1152. Affidavit of printer—allowance of claims.
- 82-1153. Penalty for false affidavit or overcharge.
- 82-1154. Size of type for state publications.
- 82-1155. Rule and figure work—short pages.
- 82-1156. Computation of title pages and cuts—exceptions.
- 82-1157. Preference of Montana printers and binders in publishing decisions, session laws and codes.

82-1101
(232 RCM '35)
Rel. Matter
SL, 49, C. 186
Secs. 1-3
PP. 446-449

82-1101. (232) Board, how composed. The governor, secretary of state, and attorney general constitute a board of examiners, with power to examine all claims against the state, except salaries or compensation of officers fixed by law, and perform such other duties as may be prescribed by law. No claim against the state, except salaries and compensation of officers fixed by law, must be passed upon by the legislative assembly without first having been considered and acted upon by said board.

History: Sections 232 to 253 were enacted as Sections 1 to 21, pp. 183 to 187, L. 1891; re-en. Secs. 680 to 701, Pol. C. 1895; appearing as Secs. 226 to 247, Rev. C. 1907; re-en. Sec. 232, R. C. M. 1921. Cal. Pol. C. Secs. 654-685.

Cross-References

Appropriations, duties concerning, secs. 79-1001 to 79-1011.

Bonds of state officers, sec. 6-102.

Contingent revolving accounts, duties concerning, sec. 79-602.

Destruction of old state papers, sec. 59-513.

District judges, audit of claims, sec. 93-306.

Investment of special funds in general fund warrants, sec. 79-305.

National guard, expense account, sec. 77-151.

Neglect of duty, penalty, sec. 94-1514.

Printing, duties, secs. 82-1906, 82-1909.

Prisoners, audit of bills for transporting, sec. 80-748.

Public reports, printing authorized, sec. 59-703.

Purchasing and repairs, sec. 82-1904 et seq.

Secretary of state, expense account, sec. 82-2212.

State industrial school, duties, sec. 80-827.

State institutions, control of expenditures, sec. 75-310.

State officers attending conventions, allowances, sec. 25-508.

State owned motor vehicles, custodian, secs. 53-501 to 53-510.

State prison, audit of expenses, secs. 80-747, 80-748.

State treasurer, examination of books and suspension, secs. 79-811, 79-812.

State tuberculosis sanitarium, duties, secs. 80-202, 80-205, 80-214, 80-216.

Traveling expenses of state employees, duties, secs. 59-524 to 59-529.

Veterans' welfare fund, duties, sec. 77-1103.

Limitations

Both this section and section 20 of article VII of the constitution, apply to unliquidated claims, and not to those the amounts of which have been fixed specifically by contract or by any department of the state government having authority to fix them. State ex rel. Schneider v. Cunningham, 39 M 165, 172, 101 P 962.

References

Wheeler v. Mitchell, 110 M 385, 387, 101 P 2d 1071.

States—45, 173.

59 C.J. States §§ 144 et seq., 436 et seq.

Power to remit, release, or compromise tax claims. 99 ALR 1062.

Power of city, town, or county or its officials to compromise claim. 105 ALR 170.

82-1102. (233) Meetings and officers. The meetings of the said board are held at the seat of government on the third Monday in each month, and such other times as the president may call it together; and the governor is

the president and the secretary of state is the secretary of said board, and, in the absence of either, an officer pro tempore may be elected from their number.

History: Sec. 227, Rev. C. 1907; re-en. 216 P 344; State v. Rouleau et al., 68 M Sec. 233, R. C. M. 1921. See also history 529, 540, 219 P 1096.
of Sec. 82-1101.

References States 173.
Porter v. Hartley et al., 67 M 244, 251, 59 C.J. States § 436 et seq.

82-1103. Exchange of surplus commodities by state institutions—when permitted. Only when consent therefor is first obtained from the state board of examiners, any state institution incidentally engaged in producing commodities of any kind for its own use, and having a surplus of any commodities so produced, may exchange or trade the same for other commodities and supplies with another state institution or otherwise, when the best interests of such commodity producing institution and the state of Montana are served thereby.

History: En. Sec. 1, Ch. 69, L. 1943.

82-1104. Prison made goods not affected. Nothing in this act shall be deemed to modify, amend or abridge sections 4-347, 4-348, 79-601, 84-1603, 84-1901, 84-1902, 84-1903, 84-2012 and 84-2203, or any law or laws pertaining to the making or marketing of prison made goods or any law or laws regulating or prohibiting the use or employment of convict labor.

History: En. Sec. 2, Ch. 69, L. 1943.

82-1105. (234) Records. The board must keep a record of all its proceedings, and any member may cause his dissent to the action of the majority upon any matter to be entered upon such record. And all claims must be entered upon the minutes of the board before the same are acted upon.

History: Sec. 228, Rev. C. 1907; re-en. **References**
Sec. 234, R. C. M. 1921. See also history State v. Rouleau et al., 68 M 529, 540,
of Sec. 82-1101. 219 P 1096.

82-1106. (235) Rules and regulations. The board may, in writing, establish rules and regulations not inconsistent with law for its government.

History: Sec. 229, Rev. C. 1907; re-en.
Sec. 235, R. C. M. 1921. See also history
of Sec. 82-1101.

82-1107. (236) Witnesses. The president may issue subpoenas and compel the attendance of witnesses before the board, or any member thereof, in the same manner that any court in the state may; and whenever the testimony of any witness against a demand pending before it is material, the president must cause the attendance of the witness before the board, or a member thereof, to testify concerning the demand, and the board may make a reasonable allowance therefor, not exceeding the fees of witnesses in civil cases, which must be paid out of the appropriation for the contingent expenses of the board, but in no instance can an allowance be made in favor of a witness who appeared in behalf of the claimant.

History: Sec. 230, Rev. C. 1907; re-en. **States** 181.
Sec. 236, R. C. M. 1921. See also history 59 C.J. States, § 435 et seq.
of Sec. 82-1101.

82-1103
(SL. '43, C. 69
Sec. 1)
Amended
SL. '49, C. 116
Sec. 1, P. 221

82-1108. (237) Depositions. Each member of the board may take depositions to be used before it.

History: Sec. 231, Rev. C. 1907; re-en. Depositions 16.
 Sec. 237, R. C. M. 1921. See also history 26 C.J.S. Depositions § 7.
 of Sec. 82-1101.

82-1109. (238) Claims for which appropriations have been made. Any person having a claim against the state, for which an appropriation has been made, may present the same to the board in the form of an account or petition, and the secretary of the board must date, number, and file such claim, and the board must allow or reject the same in the order of its presentation. The board may for cause postpone action upon a claim for not exceeding one month.

History: Sec. 232, Rev. C. 1907; re-en. 216 P 344; State v. Brannon et al., 86 M
 Sec. 238, R. C. M. 1921. See also history 200, 217, 283 P 202.
 of Sec. 82-1101.

References States 177, 182.
 Porter v. Hartley et al., 67 M 244, 251, 59 C.J. States § 430 et seq.

82-1110. (239) Approval and warrant. If the board approve such claim they must indorse thereon, over their signatures, "Approved for the sum of ——— dollars," and transmit the same to the office of the state auditor; and the auditor must draw his warrant for the amount so approved in favor of the claimant, or his assigns, in the order in which the same was approved.

History: Sec. 233, Rev. C. 1907; re-en. v. Hickman, 11 M 541, 553, 29 P 92;
 Sec. 239, R. C. M. 1921. See also history Porter v. Hartley, 67 M 244, 252, 216 P
 of Sec. 82-1101. 344.

References States 178, 182.
 Cited or applied in State ex rel. Palmer 59 C.J. States §§ 435, 440.

82-1111. (240) Disapproval of claims. If the board disapprove such claim, it must cause the same to be filed with the records of the board, with a statement showing such disapproval and the reasons therefor.

History: Sec. 234, Rev. C. 1907; re-en. States 182.
 Sec. 240, R. C. M. 1921. See also history 59 C.J. States § 440.
 of Sec. 82-1101.

82-1112. (241) Claims provided for, but for which there is no appropriation. If no appropriation has been made for the payment of any claim presented to the board, the settlement of which is provided for by law, or if an appropriation made has been exhausted, the board must audit the same, and if they approve it, must transmit it to the legislative assembly with a statement of their approval.

History: Sec. 235, Rev. C. 1907; re-en. States 181.
 Sec. 241, R. C. M. 1921. See also history 59 C.J. States § 435.
 of Sec. 82-1101.

82-1113. (242) Unsettled claims. Any person having a claim against the state, the settlement of which is not otherwise provided for by law, must present the same to the board of examiners, at least two months before the meeting of the legislative assembly, accompanied by a statement showing the facts constituting the claim, verified in the same manner as complaints in civil actions.

82-1113
 (242 RCM '35)
 Ref. to
 S.L. 49, C. 186
 Sec. 2, P. 448

History: Sec. 236, Rev. C. 1907; re-en. States 175, 176.
 Sec. 242, R. C. M. 1921. See also history 59 C.J. States § 430.
 of Sec. 82-1101.

82-1114. (243) Time for meeting for action on unsettled claims. On the first Monday of November preceding the meeting of each legislative assembly, the board must hold a session for the purpose of examining the class of claims referred to in the preceding section, and may adjourn from time to time until their work is completed. They must cause a list and brief abstract of all claims filed with them up to that date to be made and published in some newspaper at the seat of government for such time as they may prescribe. The list must be accompanied by a general notice of the order in which and of the time when the board will proceed to examine the claims.

History: Sec. 237, Rev. C. 1907; re-en. States 181.
 Sec. 243, R. C. M. 1921. See also history 59 C.J. States § 435.
 of Sec. 82-1101.

82-1115. (244) Proof and examination of such claims. The board must, at the time designated, proceed to examine and adjust all such claims. They may hear evidence in support of or against them, and report to the legislative assembly such facts and recommendations concerning them as they may think proper. In making their recommendations they may state and use any official or personal knowledge which any member of the board may have touching such claims.

History: Sec. 238, Rev. C. 1907; re-en. References
 Sec. 244, R. C. M. 1921. See also history Porter v. Hartley, 67 M 244, 252, 216
 of Sec. 82-1101. P 344.

82-1116. (245) Report on such claim. The board must make up their report and recommendations at least thirty days before the meeting of the legislative assembly. A brief abstract of their report, showing the claims rejected, and those, or the amounts thereof, allowed, must be published in a newspaper published at the seat of government for such time as the board may prescribe before the meeting of the legislative assembly.

History: Sec. 239, Rev. C. 1907; re-en.
 Sec. 245, R. C. M. 1921. See also history
 of Sec. 82-1101.

82-1117. (246) Disqualifications. No member of the board must act upon any claim in which he is interested, or for expenditures incurred in his office, nor must he be present when the decision thereon is made.

History: Sec. 240, Rev. C. 1907; re-en. States 173.
 Sec. 246, R. C. M. 1921. See also history 59 C.J. States § 436.
 of Sec. 82-1101.

82-1118. (247) Restrictions on power of board. The board must not entertain for the second time a demand against the state once rejected by it or by the legislative assembly, unless such facts are presented to the board as in suits between individuals would furnish sufficient ground for granting a new trial.

History: Sec. 241, Rev. C. 1907; re-en. States 182.
 Sec. 247, R. C. M. 1921. See also history 59 C.J. States § 441.
 of Sec. 82-1101.

82-1119. (248) Appeals. Any person interested, who is aggrieved by the disapproval of a claim by the board, may appeal from the decision to the legislative assembly of the state, by filing with the board a notice thereof, and upon the receipt of such notice the board must transmit the demand and all the papers accompanying the same, with a statement of the evidence taken before it, to the legislative assembly.

History: Sec. 242, Rev. C. 1907; re-en. States 133.
 Sec. 248, R. C. M. 1921. See also history 59 C. J. States § 452 et seq.
 of Sec. 82-1101.

82-1120. (249) Auditor not to draw warrant for claims not audited. The state auditor must not draw his warrant for any claim unless it has been approved by the board, except for salaries or compensation of officers fixed by law.

History: Sec. 243, Rev. C. 1907; re-en. States 137.
 Sec. 249, R. C. M. 1921. See also history 59 C.J. States § 403.
 of Sec. 82-1101.

82-1121. (250) Board may prevent payment of auditor's warrants. Whenever the board has reason to believe that the state auditor has drawn, or is about to draw his warrant without authority of law, or for a larger amount than the state actually owes, the board must notify the state treasurer not to pay the warrant so drawn or to be drawn; and thereupon the treasurer is prohibited from paying the warrant, whether already drawn or not, until he is otherwise directed by the legislative assembly or the board.

History: Sec. 244, Rev. C. 1907, re-en. References
 Sec. 250, R. C. M. 1921. See also history States ex rel. Jones v. Erickson, 75 M
 of Sec. 82-1101. 429, 457, 244 P 287.

States 142.
 59 C.J. States § 408.

82-1122. (251) Must examine books of auditor and treasurer. As often as it may deem proper the board must examine the books of the state auditor and state treasurer, the accounts and vouchers in their offices, and count the money in the treasury, and for that purpose they may demand, and the state auditor and state treasurer must furnish without delay, all information touching the books, papers, vouchers, or matters pertaining to their offices.

History: Sec. 245, Rev. C. 1907; re-en. States 73.
 Sec. 251, R. C. M. 1921. See also history 59 C.J. States § 437.
 of Sec. 82-1101.

82-1123. (252) Must make statement. The board must, at least once in each month, make and file in the office of the secretary of state, and publish in some newspaper at the seat of government, a statement showing the amount of money in the treasury.

History: Sec. 246, Rev. C. 1907; re-en.
 Sec. 252, R. C. M. 1921. See also history
 of Sec. 82-1101.

82-1124. (253) Auditor and treasurer must permit examination, etc. The state auditor and state treasurer must permit the board of examiners to examine the books and papers in their respective offices, and the treasurer

must permit the money in the treasury, without delay on any pretense whatever, to be counted whenever the board wishes to make an examination or count.

History: Sec. 247, Rev. C. 1907; re-en. Sec. 253, R. C. M. 1921. See also history of Sec. 82-1101.

82-1125. (254) Furnishing board. The governor, secretary of state, and attorney general of the state of Montana are hereby constituted ex officio a furnishing board, with the powers and duties hereinafter specified.

History: En. Sec. 702, Pol. C. 1895; States 93.
re-en. Sec. 248, Rev. C. 1907; re-en. Sec. 59 C.J. States § 284 et seq.
254, R. C. M. 1921.

82-1126. (255) Board of supplies. The board of examiners is also a board of supplies and furnishing board.

History: En. Sec. 703, Pol. C. 1895;
re-en. Sec. 249, Rev. C. 1907; re-en. Sec. 255, R. C. M. 1921.

82-1127. (256) Duties of such board. It is the duty of such board:

1. To contract for the furnishing of all stationery, printing, binding, paper, fuel, lights, and other necessary supplies, to be used by the legislative assembly and all other departments of the government, and the printing, binding, and distributing of the laws, codes, journals, department reports, reports of the decisions of the supreme court, and all other printing and binding, and repairing of any books used by any state officer or department.

2. To hire all offices for the state officers, and to furnish the same; to keep the furniture in repair, and to hire and furnish halls and rooms for the use of the legislative assembly, and to provide furniture therefor, and keep the same in repair.

3. To cause to be deposited in the office of the secretary of state all stationery, books, and other articles and supplies furnished and on hand, and to issue to any officer a requisition on the secretary of state for any books, stationery, or other supplies needed by such officer.

4. At the end of each fiscal year, and at such other times as the board thinks proper, to cause an inventory to be taken of all articles and supplies on hand and contracted for, and to make an examination of all accounts and vouchers for such supplies.

5. To establish rules for the government of the board in relation to all contracts not inconsistent with law.

History: En. Sec. 704, Pol. C. 1895; Ins. Agency v. Porter et al., 93 M 567,
re-en. Sec. 250, Rev. C. 1907; re-en. Sec. 573 et seq., 20 P 2d 643.
256, R. C. M. 1921.

82-1127
(256 RCM '35)
New Matter
SL '49, C. 206
Secs. 1-19
PP. 505-512

Supplies

Held, that fire insurance on state buildings is not included within the term "supplies" for the furnishing of which the state board of examiners must call for bids under proper advertisements. Miller

References

Wheeler v. Mitchell, 110 M 385, 387, 101 P 2d 1071.

43 Am. Jur. 750, Public Works and Contracts, §§ 10 et seq.

82-1128. (257) Contracts must be advertised. Before any contract is let the board must advertise for twenty days in two daily newspapers

printed in the state, one of which must be published at the seat of government, for sealed proposals to furnish any and all the supplies mentioned in the next preceding section.

History: En. Sec. 705, Pol. C. 1895; re-en. Sec. 251, Rev. C. 1907; re-en. Sec. 257, R. C. M. 1921.

Operation and Effect

Where advertising for bids is a statutory requirement, neither the municipality nor its agents can make a contract binding upon it without compliance with the formalities so prescribed. State ex rel. Robert M. F. Co. v. Toole, 26 M 22, 35, 66 P 496.

Id. When an advertisement for proposals for the furnishing of supplies was not made in compliance with this section, but was made only in a newspaper which

had the contract for the public printing, the contention that the publication was lawful because the advertisement was public printing was without merit.

Id. This section is not repugnant to section 30, article V, of the constitution.

Held, that fire insurance on state buildings is not included within the term "supplies" for the furnishing of which the state board of examiners must call for bids under proper advertisements. Miller Ins. Agency v. Porter et al., 93 M 567, 573 et seq., 20 P 2d 643.

States↪98.

59 C.J. States § 297.

82-1129. (258) Contents of advertisement. The board must specify in the advertisement the amount and kind of each article required. A sample and minute description of each article must accompany and be deposited with each proposal.

History: En. Sec. 706, Pol. C. 1895; re-en. Sec. 252, Rev. C. 1907; re-en. Sec. 258, R. C. M. 1921.

References

Cited or applied as section 706, political code, in State ex rel. Robert M. F. Co. v. Toole, 26 M 22, 27, 66 P 496.

82-1130. (259) Awarding the contract. The proposals received must be directed to the board, opened and compared by it at its office at twelve o'clock, noon, of the day specified in the advertisement, and the board must award the contract for furnishing such supplies, or any of them, to the lowest responsible bidder at such time.

History: En. Sec. 707, Pol. C. 1895; re-en. Sec. 253, Rev. C. 1907; re-en. Sec. 259, R. C. M. 1921.

Operation and Effect

The statute imposes upon the board of examiners the duty to award the contract to the lowest responsible bidder, unless the bids be rejected; and whenever, after a compliance with the statutory prerequisites essential to the valid acceptance of a bid, it has regularly awarded the contract, there springs into existence vested rights which the board cannot destroy or impair. It cannot insert into the formal written contract any condition not consonant with the contract already made by virtue of the acceptance of the bid. In the absence of fraud, accident, and mistake, or other legal reason sufficient to render the acceptance void or voidable, the contract resulting therefrom cannot (unless by mutual consent) be changed or annulled, nor by its obligation be impaired, by any act of the board. State ex rel. Robert M. F. Co. v. Toole, 26 M 22, 29, 66 P 496.

Id. Where the board regularly accepts

a bid for supplies, its action in subsequently attempting to rescind the contract because the bidder is shown to be a corporation employing non-union workmen, and hostile to labor organizations, is void.

States↪98.

59 C.J. States § 301.

43 Am. Jur. 764, Public Works and Contracts, §§ 23 et seq.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

What is an "emergency" within statutory provision excepting emergency contract or work for requirement of bidding on public contracts. 71 ALR 173.

Right in submitting proposal for bids on public works to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work. 79 ALR 225.

Rights and remedies of bidder for public contract who has not entered into a

contract, where bid was based on his own mistake of fact or that of his employees. 80 ALR 586.

Mandamus to compel consideration, acceptance, or rejection of bids for public contract. 80 ALR 1382.

Right to award public contract to one

other than lowest financial bidder as affected by fact that bidder furnishes bond. 86 ALR 131.

Liability of municipality or other governmental body on implied or quasi contract for value of property or work. 154 ALR 356.

82-1131. (259.1) Advertising for bids—when required—contracts—requirements—advertising. It shall be unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of said state to let any contract for the construction of buildings or the alteration, repair and improvement of buildings and grounds on behalf of and for the benefit of the state where the amount involved is five hundred dollars (\$500.00) or more without first advertising in at least one (1) issue each week for three (3) consecutive weeks in two (2) newspapers published in the state, one (1) of which must be published at the seat of government, and the other in the county where the work is to be performed calling for sealed bids to perform such work and stating the time and place, when and where such bids will be considered.

History: En. Sec. 1, Ch. 149, L. 1927. States—98.

NOTE.—See annotations under previous section. 59 C.J. States § 297.

82-1132. (259.2) Contents of advertisement. The board must specify in the advertisement the amount, kind, and general character of the buildings or grounds to be improved, altered, repaired, or constructed and must refer to the place where the plans, specifications and details may be found, and the same must be available to any prospective bidder.

History: En. Sec. 2, Ch. 149, L. 1927.

82-1133. (259.3) Number of bids required—certified check to accompany bid. There must be bids from at least two (2) responsible contractors in their respective lines when said contract involves an expenditure of more than two thousand dollars (\$2,000.00); each bid must be accompanied by a certified check for 5% of the amount of his bid.

History: En. Sec. 3, Ch. 149, L. 1927.

82-1134. (259.4) Awarding contracts. The bids received must be given to the board, opened and compared at its office at ten o'clock a. m. of the day specified in the advertisement, and the board must award the contract for the construction of the buildings or the alteration, repair, or improvement of any buildings and grounds to the lowest responsible bidder at such time. Provided, however, said board has power to reject any and all bids.

History: En. Sec. 4, Ch. 149, L. 1927. States—98.

59 C.J. States § 301.

82-1135. (259.5) Cost plus system invalidates contracts. Any contracts hereafter made by, on behalf of or for the state of Montana after the passage of this act which shall directly or indirectly recognize the cost plus system or principle shall be void and of no effect, and this act shall stand as a notice of the invalidity of any such contract.

History: En. Sec. 5, Ch. 149, L. 1927.

States—100.

59 C.J. States § 293.

82-1136. (259.6) State purchasing department not affected. Nothing herewith contained shall in any way be construed as altering, modifying or changing the laws providing for or relating to the state purchasing department, or the purchasing agent of the state.

History: En. Sec. 6, Ch. 149, L. 1927. States~~C~~93.
59 C.J. States § 284 et seq.

82-1137. (260) State printing—union label. All printing for which the state of Montana is chargeable, including reports of state officers, state boards, pamphlets, blanks, letter heads, envelopes, and printed matter of every kind and description, save and except certificates of appointment and election to office, shall have the label of the branch of the international typographical union of the city in which they are printed.

History: En. Sec. 1, p. 58, L. 1897; Council v. Mitchell, 105 M 326, 330, 74 re-en. Sec. 254, Rev. C. 1907; re-en. Sec. P 2d 417.
260, R. C. M. 1921.

References States~~C~~100.
State ex rel. Helena Allied Printing 59 C.J. States § 293.

82-1138. (261) Penalty. Any officer of the state who shall accept any printed matter, save and except certificates named in the preceding section, for which the state is chargeable, which does not bear a label indicating that it was printed in an office under the jurisdiction of the international typographical union, shall be subject to a fine of fifty dollars for each and every offense.

History: En. Sec. 1, p. 58, L. 1897;
re-en. Sec. 255, Rev. C. 1907; re-en. Sec.
261, R. C. M. 1921.

82-1139. (262) The bond. Each bid must be accompanied by a bond, with two or more sureties, in a sum not less than twice the amount of the value of the articles to be supplied, payable to the state, conditioned that if the bidder receives the contract he will deliver the supplies for which he has contracted, under such rules and regulations as the board may prescribe, and for the faithful performance of the contract.

History: En. Sec. 708, Pol. C. 1895; States~~C~~98.
re-en. Sec. 256, Rev. C. 1907; re-en. Sec. 59 C.J. States § 299.
262, R. C. M. 1921.

References 43 Am. Jur. 879, Public Works and Contracts, §§ 137 et seq.
Cited or applied as section 708, political code, in State ex rel. State Pub. Co. v. Hogan, 22 M 384, 385, 56 P 818; State ex rel. State Pub. Co. v. Smith, 23 M 44, 46, 57 P 449; State ex rel. Robert M. F. Co. v. Toole, 26 M 22, 27, 66 P 496.
Right of person furnishing material or labor to maintain action on contractor's bond. 77 ALR 21.

82-1140. (263) Supplies may be classified. The board may in the advertisement classify the supplies and articles to be furnished, and may receive bids, and award contracts for such separate class of supplies, or such separate articles, as it considers the lowest and best bid. The board may require any class of supplies or separate articles thereof to be delivered in installments. Any and all bids may be rejected, and the board may advertise again.

History: En. Sec. 709, Pol. C. 1895; re-en. Sec. 257, Rev. C. 1907; re-en. Sec. 263, R. C. M. 1921.

code, in State ex rel. Robert M. F. Co. v. Toole, 26 M 22, 29, 66 P 496.

References

Cited or applied as section 709, political

States⌚98.

59 C.J. States § 297.

82-1141. (264) Must be approved by governor and state treasurer. All contracts made by the board must be approved by the governor and the state treasurer.

History: En. Sec. 710, Pol. C. 1895; re-en. Sec. 258, Rev. C. 1907; re-en. Sec. 264, R. C. M. 1921.

treasurer to approve a contract for state printing is not ministerial, but involves judicial discretion, and cannot be controlled by mandamus. State ex rel. State Pub. Co. v. Smith, 23 M 44, 50, 57 P 449.

Operation and Effect

A compliance with this section is indispensable to the validity of a contract for public printing, and such a contract, entered into by a party with the state board of examiners, without the approval of the governor and state treasurer, is void. State ex rel. State Pub. Co. v. Hogan, 22 M 384, 390, 56 P 818.

The duty of the governor and state

References

Cited or applied as section 710 political code, in State ex rel. Robert M. F. Co. v. Toole, 26 M 22, 29, 66 P 496.

States⌚100.

59 C.J. States § 294.

82-1142. (265) For supplies for the legislative assembly. The board must, at least one month before the meeting of the legislative assembly, advertise as provided in the preceding sections for the repairing and furnishing the halls and rooms, and stationery, fuel, light, and such other supplies as are necessary for the members of the legislative assembly, at the ensuing session, and at the commencement of each session thereof the board must report to the legislative assembly an account of the supplies, expenditures for the same, and the stock on hand.

History: En. Sec. 711, Pol. C. 1895; re-en. Sec. 259, Rev. C. 1907; re-en. Sec. 265, R. C. M. 1921.

States⌚94.

59 C.J. States § 297.

82-1143. (266) Rooms for state officers. The board may hire the necessary rooms for the state officers, and halls and rooms for the legislative assembly and its committees, without advertising as provided in this chapter, if the board so decide.

History: En. Sec. 712, Pol. C. 1895; re-en. Sec. 260, Rev. C. 1907; re-en. Sec. 266, R. C. M. 1921.

82-1144. (267) No officer to be interested in contracts. No member or officer of any department of the government must be in any way interested in any contract made under the provisions of this chapter.

History: En. Sec. 713, Pol. C. 1895; re-en. Sec. 261, Rev. C. 1907; re-en. Sec. 267, R. C. M. 1921.

as constituting interest within statute against public officer being interested in public contract. 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

States⌚95.

59 C.J. States § 285.

Relation as creditor of contracting party

82-1145. (268) Board may employ clerical help for state officers. The board of examiners may, at any time when necessary, employ clerical help for any state officer or board, and no clerks must be employed by such

officers or board without the authority of the board of examiners, and no such clerks must be employed by the board of examiners except when all the duties of the office cannot be performed by the officer himself.

History: En. Sec. 714, Pol. C. 1895; re-en. Sec. 262, Rev. C. 1907; re-en. Sec. 268, R. C. M. 1921.

Operation and Effect

This section does not apply to the employees of the supreme court; that court, viewed as a department of the state government, is neither an officer nor a board, and therefore does not fall within the provision concerning "clerical help for any state officer or board." State ex rel. Schneider v. Cunningham, 39 M 165, 172, 101 P 962.

References

Cited or applied as section 714, political code, in State ex rel. State Pub. Co. v. Smith, 23 M 44, 50, 57 P 449; as section 262, revised codes, in State ex rel. Hillis v. Sullivan, 48 M 320, 331, 137 P 392; State v. Rouleau et al., 68 M 529, 540, 219 P 1096.

States—53.

59 C.J. States §§ 188, 207.

82-1146. (269) Contracts in excess of appropriation prohibited. No state officer, state board of trustees, or managers or commissioners shall have any authority to, or shall contract any liability or indebtedness whatever in excess of the amount appropriated to such officer, board of trustees, or managers or commissioners, or for the office, institution, commission, or organization under his or their management or control, without previous authorization from the state board of examiners, and if any liability or indebtedness be incurred or expenditure be made, in violation of this act, no claim therefor shall be allowed by the state board of examiners.

History: En. Sec. 1, Ch. 26, L. 1907; Sec. 263, Rev. C. 1907; re-en. Sec. 269, R. C. M. 1921.

165, 101 P 962; Porter v. Hartley, 67 M 244, 216 P 344.

References

State ex rel. Jones v. Erickson, 75 M 429, 456, 244 P 287.

States—100.

59 C.J. States § 285.

Authority of Board of Examiners

When the board of examiners has exercised the powers conferred upon it by the constitution and legislative enactments of the state, its functions are ended. State ex rel. Schneider v. Cunningham, 39 M

82-1147. (269.1) Public works contracts may include provisions required by federal agencies. In all contracts let for state, county, municipal and school construction, repair and maintenance work under any of the laws of this state, when the funds for such projects are supplied in whole or in part from funds of the United States government, it shall be lawful to insert in each of said contracts any and all such provisions that are, or will be, necessary to have such contract conform to the provisions of the national industrial recovery act, or any federal statutes or regulation, under which such funds are supplied.

History: En. Sec. 1, Ch. 43, Ex. L. 1933.

States—97.

59 C.J. States § 293.

82-1148. (274) Compensation of assistants to civil executive officers. The compensation paid to the several assistants, clerks and stenographers for all civil executive officers, boards, commissions or departments shall not exceed the maximum sum specified in the annual appropriation bill passed by the legislative assembly for the year specified, and the sum so specified

in the annual appropriation bill shall be in full compensation for all services rendered by such assistants, clerks and stenographers.

History: En. Sec. 2, Ch. 108, L. 1921;
re-en. Sec. 274, R. C. M. 1921; amd. Sec.
2, Ch. 176, L. 1931.

82-1149. (276) Establishment of prices for state printing. Hereafter in all cases and instances where any publication is required by law, or is duly authorized, to be made, executed or accomplished by or for or on behalf of the state of Montana, or any of the institutions of said state or any of the departments, boards, bureaus, or commissions thereof, or any of the officers, agents or employees of the state when acting within the scope of their lawful authority and for the benefit of the state of Montana, the price for such publication and by whomsoever accomplished shall not exceed the following rate and standard hereby established and prescribed as the maximum rate and standard for all publications as aforesaid:

82-1149
Amended
L. '51, c. 137
Sec. 1, p. 234

(a) For every folio of one hundred (100) words, or any fraction thereof, one dollar and fifty cents (\$1.50) for the first insertion, and fifty cents (50c) for each subsequent insertion thereof required by law to be made.

(b) For rule and figure work, two dollars (\$2.00), for every folio of one hundred (100) words or any fraction thereof, for the first insertion and fifty cents (50c) for each subsequent insertion thereof required by law to be made.

History: En. Sec. 1, Ch. 157, L. 1921; States 96.
re-en. Sec. 276, R. C. M. 1921. 59 C.J. States § 291.

82-1150. (277) Basis of measurement. The following basis of measurement for the computation of folios in the various sizes of type is hereby fixed and prescribed as follows:

Twelve (12) lines of six (6) point type; fourteen (14) lines of seven (7) point type; or sixteen (16) lines of eight (8) point type; or eighteen (18) lines of nine (9) point type; or twenty (20) lines of ten (10) point type; in each and every instance, by actual count, carefully verified, shall constitute a folio within the meaning of this act, when set in a column thirteen (13) ems pica wide.

History: En. Sec. 2, Ch. 157, L. 1921;
re-en. Sec. 277, R. C. M. 1921.

82-1151. (278) Lower rates permissible. The prices, rates and standards herein fixed and prescribed are, in each instance, and for every case covered by this act, the maximum prices, rates and standards, and their prescription and establishment herein shall in no case be taken as prohibiting a lesser or lower rate or price than herein fixed. Every department, institution, officer or agent of the state shall, whenever possible, obtain a lower rate or price than is fixed herein, the equivalent of the minimum rate mentioned in the following section.

History: En. Sec. 3, Ch. 157, L. 1921;
re-en. Sec. 278, R. C. M. 1921.

82-1152. (279) Affidavit of printer—allowance of claims. The state board of examiners shall not allow or approve for payment any claim against

the state of Montana by any publisher or printer, natural, corporate or quasi-corporate, nor shall the state auditor draw his warrant for the payment of any such claim against the state of Montana, for legal advertising or any of the publications covered by this act, in the event there is not attached to said claim the affidavit of the publisher or printer (in the case of corporations or quasi-corporations by the business or advertising manager thereof) properly executed, setting forth that the price or rate charged the state of Montana for the publication for which claim is made, is not in excess of the minimum rate charged any other advertiser for publication or advertisement set in the same sized type and published for the same number of insertions. And it is hereby declared to be unlawful to make any claim against or to charge or attempt to charge, the state of Montana for any publication in excess of the minimum going rate charged any other advertiser for the same publication, set in the same sized type and published for the same number of insertions.

History: En. Sec. 4, Ch. 157, L. 1921; States 176.
re-en. Sec. 279, R. C. M. 1921. 59 C.J. States § 430 et seq.

82-1153. (280) Penalty for false affidavit or overcharge. Any person, or any corporation or any firm, or any quasi-corporation, who shall violate any provision of this act, or swear falsely hereunder, or charge or attempt to charge the state of Montana in excess of the prices and rates herein fixed, or in any manner circumvent or attempt to circumvent this act, or aid or abet any other person, firm, corporation or quasi-corporation in offense against this act, shall be guilty of a misdemeanor, and shall on conviction for the first offense be fined not more than one hundred dollars or be imprisoned in the county jail for not more than three months, or both such fine and imprisonment, in the discretion of the court, and shall on conviction for each subsequent offense be fined not more than three hundred dollars or be imprisoned in the county jail for not more than six months, or both such fine and imprisonment in the discretion of the court.

History: En. Sec. 5, Ch. 157, L. 1921; Fraud 68.
re-en. Sec. 280, R. C. M. 1921. 37 C.J.S. Fraud § 154.

82-1154. (281) Size of type for state publications. Hereafter in the publication of reports, pamphlets, leaflets, bulletins and similar publications, save as hereinafter excepted, to be paid for from state funds, no larger body type shall be used than eight point upon an eight-point body or slug. When desirable to give emphasis a single two-point lead may be used between paragraphs, and where subheads are employed such subheads may be set off by not to exceed two two-point leads above and below. All tabular matter shall be set in six point upon a six-point body or slug. Running heads shall be set in not larger than twelve point. Drop folios, or folios at the bottom of pages, shall not be employed. Folios shall in all cases be placed in the same line with the running heads.

History: En. Sec. 1, Ch. 178, L. 1921; States 107.
re-en. Sec. 281, R. C. M. 1921. 59 C.J.S. States § 291.

82-1155. (282) Rule and figure work—short pages. It shall be unlawful to compute as "rule and figure work," at an advanced price over ordinary

composition, any tabular or statistical matter not requiring at least three justifications, if set by hand, or three slugs, if set upon linotype or other slug-casting machine.

Short pages shall be computed on the basis of the actual amount of composition on such pages, measured from the top of the running head to the bottom of the last type-set line. If tables or other matter be dropped down from the running head in making up a page, not to exceed three picas of the blank space thus created between the running head and the type matter shall be computed and charged for.

History: En. Sec. 2, Ch. 178, L. 1921;
re-en. Sec. 282, R. C. M. 1921.

82-1156. (283) Computation of title pages and cuts—exceptions. Title pages shall be computed as if set in solid eight point, measured from the top to the bottom of the type matter. Cuts of an area of five hundred six-point ems, appearing in the text, may be computed as type-set matter; if less than a full page and more than five hundred six-point ems in area, they shall be computed at five hundred ems.

The above restrictions shall not apply to the publication of codes, session laws, legislative printing, briefs or transcripts intended for use in the state or federal courts, blanks, posters or similar printed matter.

History: En. Sec. 3, Ch. 178, L. 1921;
re-en. Sec. 283, R. C. M. 1921.

82-1157. (283.1) Preference of Montana printers and binders in publishing decisions, session laws and codes. The state purchasing agent shall, as occasion may require, call for bids for the printing and/or the binding of all decisions of the supreme court of Montana, all session laws, resolutions and memorials, and all codes and statutes (revised or otherwise). All contracts for the printing and/or binding thereof shall be let to contractors, publishers, or printers actually doing business within the state of Montana, and all labor on or connected with such printing and/or binding shall be performed within the state of Montana; and no such printing or binding shall be done or performed without the state of Montana, provided, however, that nothing herein contained shall prevent the receipt of bids from contractors, publishers or printers doing business outside of Montana, and in the event that the bids for such printing and/or binding from contractors, publishers or printers actually doing business within the state of Montana are in excess of ten (10) per centum of the bids received for such printing and/or binding from contractors, printers or publishers doing business outside the state of Montana, contracts on such bids may be let or awarded to contractors, publishers or printers outside the state of Montana, and the labor thereon performed outside of Montana.

History: En. Sec. 1, Ch. 153, L. 1935.

Sections Being on a Parity

Section 82-2004 was not impliedly repealed by this section; if Montana printing concerns should desire to offer competing bids, both sections are on a parity

and capable of being so construed and both may stand. State ex rel. Helena Allied Printing Council v. Mitchell, 105 M 326, 334, 74 P 2d 417.

States 98.
59 C.J. States § 291.

CHAPTER 12

FIRE MARSHAL, STATE

- Section 82-1201. Creation of office of state fire marshal.
 82-1202. Powers of the state fire marshal.
 82-1203. Violation of provisions.
 82-1204. Appointment and term of office.
 82-1205. Salary.
 82-1206. Assistant state fire marshal—appointment and salary.
 82-1207. Marshal not to engage in other business.
 82-1208. Special deputy fire marshal.
 82-1209. Investigation of fires.
 82-1210. Duty in carrying on investigations.
 82-1211. Penalty for violation of law.
 82-1212. Further investigation by marshal.
 82-1213. Arrests by marshal.
 82-1214. Attendance of witnesses and production of evidence.
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 82-1216. Investigation may be private.
 82-1217. Examination of premises where fire occurred.
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 82-1226. Records of fire marshal.
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 82-1228. Itemized statement of marshal's expenses.
 82-1229. Annual reports to commissioner of insurance.
 82-1230. Oath and bond of marshal and deputy.
 82-1231. Tax on fire insurance premiums for maintenance of state fire marshal's office.
 82-1232. Powers of commissioner of insurance.
 82-1233. Standardization of fire protective equipment.
 82-1234. State fire marshal to direct standardization.
 82-1235. Notice of necessary changes—converting equipment.
 82-1236. Penalty for setting or leaving fire causing damage.
 82-1237. Liability of offenders for damages and costs.

82-1201. (2737) Creation of office of state fire marshal. There is hereby created and established the office of state fire marshal, which shall be a department of and under the supervision and control of the state auditor and commissioner of insurance ex officio.

History: En. Sec. 1, Ch. 148, L. 1911; re-en. Sec. 2737, R. C. M. 1921.

Constitutionality

Held, that chapter 209, part III of the political code (secs. 82-1201 to 82-1232) creating the office of state fire marshal and prescribing his duties and powers, is not violative of section 36, article V of the constitution, as delegating municipal functions to the marshal. State ex rel. Brooks v. Cook, 84 M 478, 276 P 958.

Id. Measures for the protection of life and property against fire hazards fall within the police power of the state, which power may either be exercised by the state through proper machinery or delegated for local administration to cities or towns.

States 44.

59 C.J. States § 161.

82-1202. (2737.1) Powers of the state fire marshal. In addition to the powers heretofore granted, the state fire marshal shall have powers as per sections following:

1. The inspection and regulation of moving picture shows and theaters.

2. Overseeing the safety of and directing the means and adequacy of exit in case of fire from factories, asylums, hospitals, sanitariums, churches, schools, halls, gymnasiums, theaters, amphitheaters, stadiums, hotels and rooming houses, dormitories, apartments, clubs, motor courts, tourist inns, restaurants, night clubs, and all other places where large numbers of persons work, sleep, live or congregate from time to time for any purpose.

3. That the state fire marshal shall make at least one inspection during every year, of each state institution, and submit a copy of the report to the board of examiners with recommendations in regard to fire prevention, fire protection and to the public safety.

4. The state fire marshal shall have authority to inspect public, business, or industrial buildings and to require conformance to standards of prevention and safety and of use of premises as promulgated by the national board of fire underwriters, or by the United States bureau of standards.

5. The state fire marshal and the commissioner of insurance are hereby given power to do all things necessary and convenient for carrying into effect the laws of this state governing this act and may, from time to time, promulgate necessary rules and regulations for the better protection of the lives and property of the public.

History: En. Sec. 1, Ch. 124, L. 1929; Fire escapes, duties, secs. 69-1804, 69-amd. Sec. 1, Ch. 18, L. 1943; amd. Sec. 1, 1810.
Ch. 278, L. 1947.

Cross-References

Explosives, duties, secs. 69-1909 to 69-1911.

States 68.

59 C.J. States § 61.

9 Am. Jur. 213, Buildings, §§ 17 et seq.

82-1203. (2737.2) Violation of provisions. Every person, firm or corporation, violating any of the provisions of section 82-1202 shall be deemed guilty of a misdemeanor.

History: En. Sec. 2, Ch. 124, L. 1929; Criminal Law 27.

22 C.J.S. Criminal Law §§ 6, 7.

82-1204. (2738) Appointment and term of office. The state auditor and commissioner of insurance ex officio is hereby authorized and empowered to appoint, immediately after the approval of this act, a suitable person, a citizen of this state, who shall be designated as state fire marshal, and whose term of office shall be for four years; except, that the first officer appointed under this act shall hold office until January 1, 1913, or until his successor is appointed and qualified; provided, that such officer is subject at all times to removal by the appointing power.

History: En. Sec. 2, Ch. 148, L. 1911; References
re-en. Sec. 2738, R. C. M. 1921.

State ex rel. Brooks v. Cook, 84 M 478,
279 P 958.

82-1205. (2739) Salary. The salary of the state fire marshal shall be twenty-four hundred dollars per annum, payable monthly from the state fire marshal fund.

History: En. Sec. 3, Ch. 148, L. 1911;
amd. Sec. 1, Ch. 122, L. 1919; Sec. 1, Ch.
131, L. 1919; re-en. Sec. 2739, R. C. M. 1921.

82-1206. (2740) Assistant state fire marshal—appointment and salary. The state auditor is hereby authorized and empowered to appoint an assistant state fire marshal, at a salary of twenty-one hundred dollars per year, payable monthly.

History: En. Sec. 1, Ch. 126, L. 1919;
re-en. Sec. 2740, R. C. M. 1921.

82-1207. (2741) Marshal not to engage in other business. The state fire marshal shall not engage in any other business. He shall at all times be in the office of the state fire marshal, ready for the performance of the duties required of him by law.

History: En. Sec. 4, Ch. 148, L. 1911;
re-en. Sec. 2741, R. C. M. 1921.

82-1208. (2742) Special deputy fire marshal. In an emergency, or during the absence or disability of the state fire marshal, the state auditor and commissioner of insurance may appoint a special deputy fire marshal, who shall perform the duties of the office, or any duty which may be assigned to him, such appointment to be temporary and to cease when the necessity therefor has been relieved. Said special deputy shall be allowed and paid at the rate of five dollars per day for each day's service performed in the interest of the state under said appointment, during the period for which said appointment was authorized. His claim for per diem for such service, and for necessary traveling expenses incurred in the performance of said duties, properly attested and sworn to, shall be filed with the commissioner of insurance or state fire marshal, who shall certify to the correctness of the same, and refer said claim, so certified, to the state board of examiners, and upon their approval, as required by law, said claim shall be paid in the usual manner; provided, that the warrant issued in payment of said claim shall be charged against the amount appropriated for the expenses of the state fire marshal's office; and provided, further, that the state auditor and commissioner of insurance may also appoint special deputy fire marshals without remuneration.

History: En. Sec. 5, Ch. 148, L. 1911;
amd. Sec. 1, Ch. 95, L. 1913; re-en. Sec.
2742, R. C. M. 1921.

82-1209. (2743) Investigation of fires. The state fire marshal, the chief of the fire department of each city or village in which a fire department is established, the mayor of each incorporated village in which no fire department exists, and the justice of the peace of each organized township without the limits of a village or city, shall investigate the cause, origin, and circumstances of each fire occurring in such city, village, or township, by which such property has been destroyed or damaged, and shall make an investigation to determine whether the fire was the result of carelessness or design. The investigation shall be commenced within two days, not including Sunday, if the fire occurred on that day, and the state fire marshal may superintend and direct the investigation if he deems it necessary.

History: En. Sec. 6, Ch. 148, L. 1911; Fires 9; States 73.
re-en. Sec. 2743, R. C. M. 1921. 36 C.J.S. Fires §§ 17, 18; 59 C.J. States
§ 161.

82-1210. (2744) Duty in carrying on investigations. The officer making an investigation of a fire occurring in a city, village, or township, shall forthwith notify the state fire marshal, and within one week of the occurrence of the fire shall furnish him a written statement of all facts relating to its cause and origin, and such other information as is required by forms provided by the state fire marshal.

History: En. Sec. 7, Ch. 148, L. 1911;
re-en. Sec. 2744, R. C. M. 1921.

82-1211. (2745) Penalty for violation of law. An officer named in the last two preceding sections who neglects to comply with any requirements of this chapter, shall be fined not less than twenty-five dollars nor more than two hundred dollars.

History: En. Sec. 8, Ch. 148, L. 1911;
re-en. Sec. 2745, R. C. M. 1921.

82-1212. (2746) Further investigation by marshal. If, in his opinion, further investigation is necessary, the state fire marshal or a deputy state fire marshal shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts, or to have means of knowledge in relation to the matter concerning which an examination is required by law to be made, and cause such testimony to be reduced to writing.

History: En. Sec. 9, Ch. 148, L. 1911;
re-en. Sec. 2746, R. C. M. 1921.

82-1213. (2747) Arrests by marshal. If the state fire marshal or a deputy is of the opinion that there is evidence sufficient to charge a person with arson or a similar crime, he shall arrest him or cause him to be arrested and charged with such offense. He shall furnish the prosecuting attorney such evidence, with the names of witnesses, and a copy of material testimony taken in the case.

History: En. Sec. 10, Ch. 148, L. 1911;
re-en. Sec. 2747, R. C. M. 1921.

82-1214. (2748) Attendance of witnesses and production of evidence. The state fire marshal or a deputy state fire marshal may summon and compel the attendance of witnesses before him to testify in relation to any matter which by law is a subject of inquiry and investigation, and require the production of any book, paper, or document he deems pertinent.

History: En. Sec. 11, Ch. 148, L. 1911;
re-en. Sec. 2748, R. C. M. 1921.

82-1215. (2749) Duties of marshal and deputies in case of violation of law—false swearing or contemptuous conduct of witnesses. If the state fire marshal or a deputy fire marshal shall be notified by any officer or other persons, or shall have knowledge of any violation of any of the provisions of this act, or of the laws of this state relating to fires, it shall be his duty forthwith diligently to inquire into the facts of such violation, and for that purpose he is hereby authorized to cause subpoenas to be issued for such persons as he shall have reason to believe have any information concerning, or knowledge of such violation, to appear before a justice of the peace at the time and place to be designated in the subpoena, then and there to testify

concerning any violation of any of the provisions of such laws; and for that purpose the said state fire marshal or deputy fire marshal may file with some justice of the peace a written statement signed by said state fire marshal or deputy state fire marshal, alleging any violation of the laws of this state relating to fires, or any of the provisions of this act, and said justice of the peace shall then, upon the written praecipe of the state fire marshal or deputy state fire marshal, issue subpoena for the witness named in said praecipe, commanding such witness to be and appear before such justice of the peace at the time designated in such subpoena, to testify concerning any violation of the provisions of said laws. Such subpoenas may be served by the sheriff or any constable of the county, or by any other person who is a citizen of the county, and shall be served and returned to such state fire marshal or a deputy state fire marshal, or a justice of the peace, in the same manner that subpoenas are served and returned when issued by justices of the peace. Each witness shall be sworn to make true answers to all questions propounded to him touching the matters under investigation, and the testimony of each witness shall be reduced to writing and signed by the witness. For the purpose of this act, the state fire marshal or a deputy state fire marshal shall have authority to administer an oath to any person appearing as a witness as above provided. False swearing in such a matter or proceeding shall be perjury and punished as such. Any disobedience to such subpoena or any refusal to be sworn as a witness, or to sign the testimony given by such witness, or any refusal to answer any proper question propounded to him, shall be a misdemeanor, and any person convicted thereof shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Justices of the peace, when acting under the provisions of this act, shall have power to adjourn such proceedings from time to time, and to punish any witness for contempt for, or on account of his refusal to be sworn or to answer questions as a witness, or to sign his testimony; and the attendance of witnesses may be by such justice of the peace compelled by attachment. If the testimony so taken shall disclose the fact that an offense has been committed, the county attorney of the county in which said offense was committed shall prosecute the person or persons committing such offense in the same manner as in other criminal cases.

History: En. Sec. 12, Ch. 148, L. 1911; et al., 115 M 385, 386, 145 P 2d 527; State
 amd. Sec. 1, Ch. 212, L. 1919; re-en. Sec. ex rel. Mercer v. Woods, 116 M 533, 537,
 2749, R. C. M. 1921. 155 P 2d 197.

References

State ex rel. Mercer v. District Court

82-1216. (2750) Investigation may be private. Investigation by or under the direction of the state fire marshal may, in his discretion, be private. He may exclude from the place where such investigation is held all persons other than those required to be present, and witnesses may be kept separate from each other and not be allowed to communicate with each other until they have been examined.

History: En. Sec. 13, Ch. 148, L. 1911;
 re-en. Sec. 2750, R. C. M. 1921.

82-1217. (2751) Examination of premises where fire occurred. In the performance of the duties imposed by the provisions of this chapter the state fire marshal and each of his subordinates, at all times of day or night may enter upon and examine any building or premises where a fire has occurred, and other buildings and premises adjoining or near thereto.

History: En. Sec. 14, Ch. 148, L. 1911; Fires—9.
re-en. Sec. 2751, R. C. M. 1921. 36 C.J.S. Fires §§ 17, 18.

82-1218. (2752) Entering of buildings for purpose of examination. The state fire marshal, his deputies and subordinates, the chief of the fire department of each city or village where a fire department is established, or the mayor of a city or village where no fire department exists, or the justice of the peace of a township in territory without the limits of a city or village, at all reasonable hours may enter into all buildings and upon all premises within their jurisdiction for the purpose of examination.

History: En. Sec. 15, Ch. 148, L. 1911;
re-en. Sec. 2752, R. C. M. 1921.

82-1219. (2753) Removal of dilapidated buildings—proceedings. (1) Any building or other structure which for want of proper repair, by reason of age, dilapidated condition, defective or poorly installed wiring and equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason is especially liable to fire, and which building or other structure is so situated as to endanger other buildings and property in the vicinity, is hereby declared to be a public nuisance. If the state fire marshal, a deputy state fire marshal or any officer mentioned in the preceding section, upon an examination or inspection, finds that a building or other structure, which for want of proper repair, by reason of age and dilapidated condition, defective or poorly installed electric wiring or equipment, defective chimneys, defective gas connections, defective heating apparatus, or for any other cause or reason, is especially liable to fire, and which building or other structure is so situated as to endanger other buildings or property in the vicinity, such officer should order such structure to be repaired, torn down or demolished, all materials removed and all dangerous conditions remedied.

(2) Such order shall be in writing, shall recite the grounds therefor and shall be filed in the office of the clerk of the district court of the county in which the building or structure, so ordered to be altered, repaired or demolished is situated, and thereupon all further proceedings for the enforcement thereof shall be had in said court. A copy of the order filed as aforesaid together with a written notice that the same has been so filed and will be put in force unless the owner, occupant or tenant shall file with the clerk of the said court his objections or answer thereto within the time specified in the next succeeding section, shall be served upon the owner of the building or structure so directed to be altered, repaired or demolished; and if there be a tenant occupying the building service shall also be made upon such occupant. Such service shall be made upon such owner and occupant, if there be one, personally either within or without the state; but if the whereabouts of such owner is unknown and the same cannot be

ascertained by the state fire marshal by the exercise of reasonable diligence, then upon his filing in the office of the clerk of the district court his affidavit to this effect, service of said notice upon such owner may be made by the clerk of the district court by publication of the same once in each week for three successive weeks in a newspaper printed and published in the county in which such building or structure is located and by posting a copy thereof in a conspicuous place upon said building or structure, and the service so made shall be deemed to be complete upon the expiration of the said publication period. Proof of service of said notice shall be filed in the office of the clerk of the district court within five days after the service thereof.

History: En. Sec. 16, Ch. 148, L. 1911; amd. Sec. 2, Ch. 95, L. 1913; amd. Sec. 2, Ch. 212, L. 1919; re-en. Sec. 2753, R. C. M. 1921; amd. Sec. 1, Ch. 139, L. 1929.

Cross-Reference

Unsanitary buildings as nuisances, powers of board of health, sec. 69-111.

Notice

The rule that notice to one to appear and answer in a proceeding taken against him must be reasonable as to time to constitute due process of law, means notice suitable to the particular case; and under that rule, held, that the notice of not less than five nor more than ten days required

to be given to defendant in a proceeding for the condemnation of a fire hazard under this chapter where he resides in or near the city in which the objectionable structure is situated, is reasonable, that it is clear that it was the legislative intent that in every case of that nature at least reasonable notice shall be given and that "the intention of the lawmaker constitutes the law." (Construed before amendment, Ch. 139, L. 1929.) *State ex rel. Brooks v. Cook*, 84 M 478, 276 P. 958.

Health 32; Nuisance 62, 78 et seq.

39 C.J.S. Health §§ 23, 24; 46 C.J. Nuisance §§ 146, 147, 365.

82-1220. (2753.1) Answer of owner or occupant—affirmation of order—judgment. The owner of any building so condemned, or any occupant or lessee upon whom such notice or order shall be served, within twenty days from the date of such service, as herein provided, may file with the clerk of the district court and serve upon the said state fire marshal, a deputy state fire marshal or any officer mentioned in section 82-1218, written objections to said order in the form of a verified answer, denying the existence of any of the facts therein cited which he desires to controvert. If no answer is so filed and served the owner and all other persons in interest shall be deemed to be in default and thereupon the court shall affirm the order of condemnation and direct the state fire marshal to proceed with the enforcement thereof; but if an answer be filed and served as herein provided the court shall hear and determine the issues so raised and give judgment thereon as herein provided.

History: En. Sec. 2753-A, Ch. 139, L. 1929.

References

State ex rel. Brooks v. Cook, 84 M 478, 279 P 958.

82-1221. (2753.2) Hearing and judgment. The court, upon application of the state fire marshal, deputy state fire marshal or any officer mentioned in section 82-1218, shall make its order fixing a time and place for such hearing, which time shall be within twenty days from the date of the filing of the answer or as soon thereafter as the matter may be heard. If, upon such trial the order shall be sustained judgment shall be given accordingly and a time shall be fixed within which the building or structure shall be altered,

destroyed or repaired, as the case may be, in compliance with such order, but otherwise the court shall annul or set aside the order of condemnation.

History: En. Sec. 2753-B, Ch. 139, L. 1929.

References
State ex rel. Brooks v. Cook, 84 M 478,
279 P 958.

82-1222. (2753.3) Proceedings on failure to comply with order. If the owner or other party in interest shall fail to comply with the order of condemnation of a building or structure, as herein provided, within the time fixed by the court, in case a trial is had therein, then the state fire marshal shall proceed to cause such building or structure to be altered, repaired or demolished in accordance with the directions contained in such order; and where a building or structure is demolished in accordance with such order he may sell or dispose of the salvaged materials therefrom at public auction upon five days posted notice. He shall keep an accurate account of the expenses incurred in carrying out the order and shall credit thereon the proceeds of such salvage sale, if any, and shall report his action thereon with a statement of said expenses or the balance thereof, the expense incurred by him and the amount, if any, received from such salvage sale, to the court for approval and allowance; and thereupon the court shall examine, correct if necessary and allow said expense account; and said amount so allowed shall constitute a lien against the real estate on which said building or structure is or was situated, and if the amount thereof is not paid by the owner or other party in interest within six months after the account has been examined and approved by the court as aforesaid the real estate upon which said building or structure is or was situated shall be sold under proper order of court by the sheriff of the county in which the same is situated in the manner provided by law for the sale of real estate upon execution and the proceeds of said sale shall be paid into the state treasury and credited to the fund of the state fire marshal. If the amount received as salvage or on sale shall exceed the expense incurred by the state fire marshal the court shall direct the payment of the surplus to the owner or the payment of the same into court for his use and benefit.

History: En. Sec. 2753-C, Ch. 139, L. 1929.

82-1223. (2753.4) Removal of fire hazards. If the state fire marshal, deputy state fire marshal, or any officer mentioned in section 82-1218, finds in any building or premises subject to their inspection, any combustible materials or inflammable conditions or fire hazards dangerous to the safety of the building premises or to the public such officer shall order such material, conditions, or hazards to be removed or remedied. Such order shall be in writing and directed generally to the owner, lessee, agent or occupant of such building or premises, and any such owner, lessee, agent or occupant upon whom such notice shall be served, who shall fail to comply therewith within twenty-four (24) hours thereafter, unless the order prescribes a longer time within which it may be complied with, shall be guilty of a misdemeanor and said material may be removed or dangerous condition corrected at the expense of the owner of such building or premises or at the expense of the person upon whom such service is so made, or both and the said state fire marshal, deputy state fire marshal or other officer mentioned

in section 82-1218, may maintain all necessary actions for the recovery thereof.

History: En. Sec. 2753-D, Ch. 139, L. 1929; amd. Sec. 1, Ch. 187, L. 1947.

82-1224. (2754) Appeal to state fire marshal. If the owner or occupant deems himself aggrieved by an order of an officer under the preceding section, he may appeal to the state fire marshal within twenty-four hours, and the cause of the complaint shall at once be investigated by direction of the state fire marshal. Unless such order is revoked by the state fire marshal, it shall remain in force and forthwith be complied with by such owner or occupant.

History: En. Sec. 17, Ch. 148, L. 1911; re-en. Sec. 2754, R. C. M. 1921.

82-1225. (2755) Failure of owner of buildings to comply with order. An owner or occupant of buildings or premises who fails to comply with the orders of the authorities named in the three preceding sections shall be fined not less than ten dollars nor more than fifty dollars for each day's neglect.

History: En. Sec. 18, Ch. 148, L. 1911; 35 C.J.S. Explosives §§ 4, 12.
re-en. Sec. 2755, R. C. M. 1921. Violation of statute or ordinance regarding safety of building or premises as creating or affecting liability for injuries or death. 132 ALR 863.

Explosives 4.

82-1226. (2756) Records of fire marshal. The state fire marshal shall keep in his office a record of all fires occurring in the state, the origin of such fires, and all facts, statistics, and circumstances relating thereto, which have been determined by investigations under the provisions of this chapter. Except the testimony given upon an investigation, such record shall be open at all times to public inspection.

History: En. Sec. 19, Ch. 148, L. 1911; re-en. Sec. 2756, R. C. M. 1921.

82-1227. (2757) Compensation of officers. Chiefs of fire departments and mayors of incorporated villages who do not receive compensation for their services, and justices of the peace of organized townships, who are required by the provisions of this chapter to report fires to the state fire marshal, shall receive fifty cents for each fire reported to his satisfaction, and fifteen cents per mile for each mile traveled to the place of the fire. At the close of each appropriation year such allowance shall be paid in the same manner as other claims arising in the state fire marshal's department, and as heretofore provided for in this act.

History: En. Sec. 20, Ch. 148, L. 1911; re-en. Sec. 2757, R. C. M. 1921.

82-1228. (2758) Itemized statement of marshal's expenses. The state fire marshal shall keep on file in his office an itemized statement of all expenses incurred by the department. He shall approve all vouchers issued therefor before they are submitted to the state board of examiners for payment, and thereupon such vouchers shall be allowed and paid as other claims against the state.

History: En. Sec. 21, Ch. 148, L. 1911; re-en. Sec. 2758, R. C. M. 1921.

82-1229. (2759) Annual reports to commissioner of insurance. The state fire marshal shall make an annual report to the commissioner of insurance, containing a detailed statement of his official action and the transactions of his department. The commissioner of insurance shall, in turn, submit said report to the governor of the state, with such recommendations and comments thereon as he may deem necessary.

History: En. Sec. 22, Ch. 148, L. 1911;
re-en. Sec. 2759, R. C. M. 1921.

82-1230. (2760) Oath and bond of marshal and deputy. The state fire marshal shall be required to give a surety bond, furnished by a company authorized to transact surety business in this state, in the sum of one thousand dollars, for the faithful performance of his duties, and shall subscribe and file therewith the oath of office required of all public officers; and, provided, further, that any special deputy fire marshal appointed under the provisions of this act shall also file the oath of office required of all public officers.

History: En. Sec. 23, Ch. 148, L. 1911; States 48.
re-en. Sec. 2760, R. C. M. 1921. 59 C.J. States §§ 201, 202.

NOTE.—Bond is given as fixed by sec.
6-101.

82-1231. (2761) Tax on fire insurance premiums for maintenance of state fire marshal's office. Each insurance company authorized to effect insurance on risks enumerated in paragraph one of section 40-1409, doing business in this state shall pay to the state auditor and commissioner of insurance ex-officio, during the month of February or March in each year, in addition to the license fees required by law to be paid by it, provided in section 40-1302, a tax of one-fourth of one per cent ($\frac{1}{4}$ of 1%) on the fire portion of the direct premiums on such risks received during the calendar year next preceding, after deducting cancellations and return premiums.

History: En. Sec. 24, Ch. 148, L. 1911; Insurance 7; States 127; Taxation
re-en. Sec. 2761, R. C. M. 1921; amd. sec. 140, 168.
1, Ch. 83, L. 1941; amd. Sec. 1, Ch. 162, 44 C.J.S. Insurance § 71; 59 C.J. States
L. 1947. § 378; 61 C.J. Taxation §§ 301 et seq., 339
et seq.

82-1232. (2762) Powers of commissioner of insurance. The powers and authority granted by this act to the state fire marshal are also vested in the commissioner of insurance.

History: En. Sec. 25, Ch. 148, L. 1911;
re-en. Sec. 2762, R. C. M. 1921.

82-1233. (2762.1) Standardization of fire protective equipment. That hereafter all equipment for fire protection purposes purchased by state and municipal authorities, or any other authorities having charge of public property, shall be equipped with the standard thread for fire hose couplings and hydrant fittings designated as the national standard, as adopted by the national board of fire underwriters, which standard is hereby designated as the standard for such equipment in the state of Montana.

History: En. Sec. 1, Ch. 53, L. 1929. 43 C.J. Municipal Corporations § 1456
et seq.

Municipal Corporations 201; States 68.

82-1234. (2762.2) State fire marshal to direct standardization. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the state fire marshal of Montana. The state fire marshal is authorized to proceed to make such changes as may be necessary to standardize all existing fire protection equipment in this state immediately after this act becomes effective. He shall provide such appliances as are necessary for carrying on this work and shall proceed with such standardization as rapidly as possible and complete such work at the earliest date circumstances will permit.

History: En. Sec. 2, Ch. 53, L. 1929.

82-1235. (2762.3) Notice of necessary changes—converting equipment. The state fire marshal shall notify industrial establishments and property owners having equipment for fire protection purposes, which it may be necessary for a fire department to use in protecting the property or putting out fire, of the changes necessary to bring their equipment up to the requirements of the standard hereby established and shall render them such assistance as may be available in converting their equipment to standard requirements.

History: En. Sec. 3, Ch. 53, L. 1929.

82-1236. (2766) Penalty for setting or leaving fire causing damage. Any person who shall, upon any land within this state, set or leave any fire that shall spread and damage or destroy property of any kind not his own, shall, upon conviction, be punished by a fine of not less than ten dollars nor more than five hundred dollars. If such fire be set maliciously, whether on his own or on another's land, with intent to destroy property not his own, he shall be guilty of a felony, and shall be punished by imprisonment in the state penitentiary for not less than one nor more than fifty years.

During the closed season, any person who shall kindle a camp fire on land not his own, in or dangerously near any forest material, and leave same unquenched, or who shall be a party thereto, or who shall by throwing away any lighted cigar, cigarette, matches, or by the use of firearms, or in any other manner start a fire in forest material not his own, and leave same unquenched, shall, upon conviction, be fined not less than ten dollars nor more than one hundred dollars, or be imprisoned in the county jail not exceeding sixty days.

History: En. Sec. 4, Ch. 170, L. 1919; Fires 7.
re-en. Sec. 2766, R. C. M. 1921.

36 C.J.S. Fires §§ 9-14, 16.

82-1237. (2769) Liability of offenders for damages and costs. Any person who shall, upon any land within this state, whether on his own or on another's land, set or leave any fire that shall spread and damage or destroy property of any kind not his own, shall be liable for all damages caused thereby, and any owner of property damaged or destroyed by such fire may maintain a civil suit for the purpose of recovering such damages. Any person who shall, upon any land within this state, whether on his own or on another's land, set or leave any fire which threatens to spread and damage or destroy property, shall be liable for all costs and expenses incurred by the state of Montana, or by any forestry association, or by any person extinguishing or preventing the spread of such fire.

History: En. Sec. 7, Ch. 170, L. 1919;
re-en. Sec. 2769, R. C. M. 1921.

Fires 7; Negligence 18, 23.
36 C.J.S. Fires §§ 9-14, 16; 45 C.J. Negli-
gence §§ 155 et seq., 267.

CHAPTER 13

GOVERNOR—POWERS—RECORDS—SECRETARY

- Section 82-1301. Powers and duties of governor.
82-1302. To transmit list of appointments to legislative assembly.
82-1303. Records in office of.
82-1304. Persons acting as governor.
82-1305. Salary of governor.
82-1306. Residence of governor.
82-1307. Governor's private secretary.
82-1308. Duties of secretary.

82-1301
(124 RCM '35)
Rel. Matter
SL. 49, C. 141
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82-1301. (124) Powers and duties of governor. In addition to those prescribed by the constitution, the governor has the power and must perform the duties prescribed in this and the following sections:

1. He is to supervise the official conduct of all executive and ministerial officers.

2. He is to see that all offices are filled and the duties thereof performed, or, in default thereof, apply such remedy as the law allows, and if the remedy is imperfect, acquaint the legislative assembly therewith at its next session.

3. He is to make the appointments and supply the vacancies as required by law.

4. He is the sole official organ of communication between the government of this state and the government of any other state or of the United States.

5. Whenever any suit or legal proceeding is pending against this state, or which may affect the title of this state to any property, or which may result in any claim against the state, he may direct the attorney general to appear on behalf of the state, and may employ such additional counsel as he may judge expedient.

6. He may require the attorney general or county attorney of any county to inquire into the affairs or management of any corporation existing under the laws of this state.

7. He may require the attorney general to aid the county attorney in the discharge of his duties.

8. He may offer rewards not exceeding one thousand dollars each, payable out of the general fund, for the apprehension of any convict who has escaped from the state prison, or any person who has committed or is charged with an offense punishable by death.

9. He must perform such duties respecting fugitives from justice as are prescribed by sections 94-401-1 to 94-501-25.

10. He must issue and transmit election proclamations, as prescribed by sections 23-103 to 23-106.

11. He must issue land warrants and patents, as prescribed in section 81-932.

12. He must, on or before the second Monday of November, in the year 1892, and in each second year thereafter, deliver to the secretary of state

for publication all biennial reports of officers and boards for the two preceding years.

13. He may require any officer or board to make special reports to him, upon demand, in writing.

14. He must discharge the duties of member of the board of examiners, of member of the state board of education, of member of the state board of land commissioners, of member of the board of state prison commissioners, and of the board of commissioners of the insane, deaf, dumb, and blind.

15. He has such other powers and must perform such other duties as are devolved upon him by this code, or any other law of this state.

History: En. Sec. 370, Pol. C. 1895; re-en. Sec. 145, Rev. C. 1907; re-en. Sec. 124, R. C. M. 1921. Cal. Pol. C. Sec. 380.

military occupation or operations. 24 ALR 1183.

States⇐41.

59 C.J. States § 130 et seq.

24 Am. Jur. 826, Governor, §§ 5 et seq.; 42 Am. Jur. 951, Public Officers, § 93; 36 Am. Jur. 192, Military, generally.

Power of executive to pardon one committed for contempt. 23 ALR 524.

Power to declare martial law apart from

Power to pardon or commute sentence as one which devolves upon the lieutenant governor during the absence or disability of governor. 32 ALR 1162.

Conclusiveness of governor's decision in removing officers. 52 ALR 7.

Mandamus to governor. 105 ALR 1124.

Devolution, in absence of governor, of veto and approval power, upon lieutenant governor or other officer. 136 ALR 1053.

82-1302. (125) To transmit list of appointments to legislative assembly. Within ten days after the meeting of the legislative assembly, the governor must transmit to it a list of all appointments made by him under the provisions of section 59-606, made during the recess of the legislative assembly.

History: En. Sec. 371, Pol. C. 1895; re-en. Sec. 146, Rev. C. 1907; re-en. Sec. 125, R. C. M. 1921. Cal. Pol. C. Sec. 381.

82-1303. (126) Records in office of. The governor must cause to be kept the following records:

1. A register of all applications for pardon or for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application.

2. An account of all his official expenses and disbursements, including the incidental expenses of his department, and of all rewards offered by him for the apprehension of criminals and persons charged with crime.

3. A register of all appointments made by him, with date of commission, names of appointee and predecessor.

History: En. Sec. 372, Pol. C. 1895; re-en. Sec. 147, Rev. C. 1907; re-en. Sec. 126, R. C. M. 1921. Cal. Pol. C. Sec. 382.

82-1304. (127) Persons acting as governor. Every provision of the laws of this state in relation to the powers and duties of the governor, and in relation to acts and duties to be performed by others toward him, extends to the persons performing, for the time being, the duties of governor.

History: En. Sec. 373, Pol. C. 1895; re-en. Sec. 148, Rev. C. 1907; re-en. Sec. 127, R. C. M. 1921. Cal. Pol. C. Sec. 383.

States⇐41.

59 C.J. States § 135.

82-1305. (128) Salary of governor. The annual salary of the governor, to include all services rendered ex officio as member of any board or com-

82-1305
(128 RCM '35)
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mission, as now required, or which may be by law hereafter devolved upon him, is seven thousand five hundred dollars.

History: En. Sec. 374, Pol. C. 1895; States 60.
re-en. Sec. 149, Rev. C. 1907; amd. Sec. 1, 59 C.J. States § 249.
Ch. 22, L. 1913; re-en. Sec. 128, R. C. M.
1921. Cal. Pol. C. Sec. 384.

82-1306. (129) Residence of governor. The state furnishing board is hereby authorized and directed to provide an executive residence in the city of Helena for the use of the governor of the state, said residence to be secured by purchase or otherwise, as may seem best to said board.

History: En. Sec. 1, Ch. 51, L. 1913; States 41.
re-en. Sec. 129, R. C. M. 1921. 59 C.J. States § 278 et seq.

82-1307. (120) Governor's private secretary. The private secretary of the governor is appointed by him, and holds office at the governor's pleasure.

History: En. Sec. 351, Pol. C. 1895; States 53.
re-en. Sec. 139, Rev. C. 1907; re-en. Sec. 120, R. C. M. 1921. 59 C.J. States §§ 188, 207.
Cal. Pol. C. Sec. 370.

82-1308. (121) Duties of secretary. The secretary shall perform such duties as may be required of him by the governor and the laws of the state.

History: En. Sec. 2, p. 68, L. 1893; States 74.
re-en. Sec. 353, Pol. C. 1895; re-en. Sec. 141, 59 C.J. States § 123 et seq.
Rev. C. 1907; re-en. Sec. 121, R. C. M. 1921.

CHAPTER 14

GOVERNOR'S COMMITTEE ON REORGANIZATION

- Section 82-1401. Governor and advisory committee to study structure of state government.
82-1402. Governor's committee on reorganization and economy.
82-1403. Appointment of persons skilled in science of state and municipal government and finance.
82-1404. Appointees to have access to official records—report to governor.
82-1405. Cooperation by state officers.
82-1406. Governor may effect certain changes by executive order.
82-1407. Report by governor to legislative assembly.
82-1408. Witnesses may be subpoenaed.
82-1409. Appropriation—limitation on use.

82-1401. Governor and advisory committee to study structure of state government. The governor is hereby authorized and directed, with the aid of an advisory committee and consultants hereinafter provided for, to make a comprehensive and constructive study and review of the entire organization structure of the state government and of every department, institution, commission, board and other agency of the state government, for the purpose of developing and recommending a program of improvement and economy to include such changes as will serve to simplify and modernize the organization and procedures of the state and will aid in the securing of the maximum return in public services for each dollar of state revenue.

History: En. Sec. 1, Ch. 56, L. 1941.

82-1402. Governor's committee on reorganization and economy. The governor is hereby authorized to appoint an advisory committee, to be known as the governor's committee on reorganization and economy, to counsel and assist him in directing the study provided for by this act. The

committee shall have seven (7) members appointed by the governor; two (2) of whom shall be members of the state senate, two (2) of whom shall be members of the house of representatives, and the other three (3) shall be residents and citizens of the state of Montana. The governor shall name the chairman of the committee. The members of the committee shall serve without compensation, but, with the prior approval of the governor, shall be reimbursed for their actual traveling and other expenses incurred in the performance of the duties of the committee.

History: En. Sec. 2, Ch. 56, L. 1941.

82-1403. Appointment of persons skilled in science of state and municipal government and finance. For the purpose of exercising and carrying out the authority and power hereby granted, the governor may, with the advice of the advisory committee:

(1) Appoint or employ one (1) or more persons, or some association of persons, including among them expert accountants and others especially skilled in the science of state and municipal government and finance, as is contemplated by this act. The persons so employed need not be residents or citizens of this state but must have no affiliations with any institution or agency, which would interfere with the expression of impartial, unbiased, professional opinions on the questions involved, and he may authorize the person, persons or associations so appointed or employed, to employ such accountants, clerks, stenographers, and other assistants, as may be deemed necessary in order to enable a full, complete and thorough study to be made.

History: En. Sec. 3, Ch. 56, L. 1941.

82-1404. Appointees to have access to official records—report to governor. The person or persons so appointed shall have access to and the right to examine all papers, documents and records of every kind and character of all offices, boards, bureaus, commissions, departments and institutions, and to make such copy or copies thereof as may be deemed necessary. The person, persons, or association so employed shall, at such time or times during the course of such study as the governor may deem proper, make reports in writing to him regarding such study, the progress thereof, and the possible improvements disclosed thereby, and shall, not later than November 15, 1942, complete such study and make a full and complete report in writing to the governor, which report shall (1) show the results of such study, and the possible improvements disclosed thereby; (2) recommend changes in keeping financial and other records, the abolishment of any thereof, or the keeping of additional records; (3) recommend the abolishment, reorganization or consolidation of offices, bureaus, boards, commissions, departments or institutions which may be deemed necessary in order to do away with and prevent any existing abuses, inefficiency, duplication of work or services, or to reduce expenditures of public or state funds or money, and for the adoption of any method or system which will result in simplifying the operations of the state government, or any of its offices, bureaus, boards, commissions, departments or institutions and provide for the conduct of its finances, businesses, affairs and policies in a more uniform, orderly, economical and businesslike manner.

History: En. Sec. 4, Ch. 56, L. 1941.

82-1405. Cooperation by state officers. It shall be the duty of all state officers, employees, boards, commissions, departments and institutions to cooperate with and assist in said study, and, upon request of the governor, furnish written itemized and tabulated data on the records of their particular department.

History: En. Sec. 5, Ch. 56, L. 1941.

82-1406. Governor may effect certain changes by executive order. If the governor shall approve of any recommendation or recommendations contained in any such report regarding any change or changes in the keeping of the financial or other records, or the abolishment of any thereof, or the keeping of additional records by any office, bureau, board, commission, department or institution, or any changes in administrative procedure, and no legislative action is required to carry such recommendations into effect, the governor, with the advice of the advisory committee, may, by an executive order or orders, place such recommendations into full force and effect and require compliance therewith by the office, bureau, board, commission, department or institution to which such order or orders may be directed.

History: En. Sec. 6, Ch. 56, L. 1941.

82-1407. Report by governor to legislative assembly. From the reports made to him regarding such study the governor shall, with the advice of the advisory committee, make and submit to the twenty-eighth legislative assembly

(1) A full and complete report which shall contain the facts and matters set forth and contained in such reports together with such recommendations as such reports may contain;

(2) A report of any executive order or orders, with regard to any of such recommendations which he has made, if any, and he shall set out copies of such orders in his report; and

(3) Such recommendations, to the twenty-eighth legislative assembly, regarding such study and report, as he may deem proper.

History: En. Sec. 7, Ch. 56, L. 1941.

82-1408. Witnesses may be subpoenaed. The governor may appoint and designate one (1) or more residents and citizens of the state of Montana as special representatives of the state of Montana, and such person or persons shall have power to issue subpoenas, requiring the attendance of witnesses and the production of books, papers, documents and records, relating to any question or matter being studied and to administer oaths to persons subpoenaed as witnesses.

History: En. Sec. 8, Ch. 56, L. 1941.

82-1409. Appropriation—limitation on use. That to defray the cost of making such study and to fully carry out the provisions of this act there is hereby appropriated from the general fund of the state twenty thousand dollars (\$20,000.00); provided that the total cost of such study, including the making and publication of all reports in connection therewith, shall not exceed the amount so appropriated. No money shall be paid for any expenses in connection with such study, except upon an order of the governor, and all claims therefor shall be audited by the state board of examiners and

paid by warrants upon the state treasurer drawn against the appropriation hereby made for the payment thereof.

History: En. Sec. 9, Ch. 56, L. 1941.

CHAPTER 15

HAIL INSURANCE, STATE BOARD OF

- Section 82-1501. State board of hail insurance—creation and powers—insurance, how effected.
- 82-1502. Maximum insurance.
- 82-1503. Delinquent taxes—effect on application—cash payment—application by delinquent—crop lien.
- 82-1504. Hail insurance secured by crop lien only.
- 82-1505. Reinsurance.
- 82-1506. Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates.
- 82-1507. Scope and object of levy—reserve fund.
- 82-1508. Withdrawal of crop in case of destruction through other means.
- 82-1509. Collection of levies—release of lien—compromise.
- 82-1510. Foreclosure of lien.
- 82-1511. State treasurer, duty of—funds—transfer of funds—warrants.
- 82-1512. Duty of county assessor—election of benefits of law.
- 82-1513. What crops subject to provisions of law.
- 82-1514. Report of losses.
- 82-1515. Appraisers—appointment—qualifications and duties.
- 82-1516. Appointment of appraisers in case of dissatisfaction with official adjustment.
- 82-1517. Payment of losses.
- 82-1518. Who may elect to become subject to provisions of law.
- 82-1519. Compensation of chairman and officers—financial report.
- 82-1520. Benefits exempt from execution, etc.

82-1501. (350) State board of hail insurance—creation and powers—insurance, how effected. (1) There is hereby created a state board of hail insurance of five members consisting of the state treasurer, and the commissioner of agriculture, labor and industry, who will be secretary of state board, and three other members to be appointed by the governor from the names submitted therefor by the duly organized farmer societies having a general membership throughout the state. The governor shall designate one of said appointive members to serve for three years to act as chairman of the board, one to serve for a term of two years, and one to serve for a term of one year. Whenever the term of any member shall expire, either by death, resignation, or removal for cause, or expiration of his term of office, the governor shall appoint his successor, and shall also appoint one of the board for chairman in case of a vacancy in that office.

(2) Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All members of the board shall be subject to removal for cause by the governor; the said board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make such rules and regulations as it may from time to time find practical, necessary and beneficial for the conduct of the department of hail insurance, subject to the provisions of this act. It shall have full charge of said department as herein provided for; it shall prepare blank

forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act, and furnish such forms to all public officers respectively charged with the performance of any official duty in connection therewith; it shall prepare a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, such form to be submitted by the county assessor of each county at the time in which the regular assessments of property are by such assessors made, to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not.

(3) Every such farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the blanks above referred to, properly filled out not later than August 15th, and shall be chargeable with the tax on lands growing crops subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor. Provided, however, that this act shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this act.

History: En. Sec. 1, Ch. 169, L. 1917; 44 C.J.S. Insurance § 44; 59 C.J. States
amd. Sec. 1, Ch. 17, Ex. L. 1918; amd. Sec. § 143½.
1, Ch. 141, L. 1921; re-en. Sec. 350, R. C. M. Construction of hail insurance policy. 4
1921; amd. Sec. 1, Ch. 40, L. 1923. ALR 1298.

Insurance—13½; States—45. Constitutionality of crop insurance statutes. 113 ALR 739.

82-1502. (350.1) Maximum insurance. No more than ten dollars (\$10.00) insurance shall be written on each acre of grain. When more than one party desires hail insurance each shall be entitled to the share of the maximum represented by his interest in the crop. Either party may insure his share in the crop for any amount up to and including the maximum per acre if the others waive their right to insure.

History: En. Sec. 2, Ch. 40, L. 1923.

82-1503. (350.2) Delinquent taxes—effect on application—cash payment—application by delinquent—crop lien. (1) No owner of land who has more than one (1) year's delinquent taxes on his land shall be allowed hail insurance under the provisions of this act, unless his application is accompanied by a cash payment for the amount that would be due on said application in the event of a maximum levy for that year.

(2) Provided, however, that when an applicant for hail insurance tenders cash for the same to the county assessor, he shall be allowed a discount of four percentum (4%). His hail insurance shall be issued upon said cash payment less the four percentum (4%) mentioned. The charge for the insurance shall be based on the maximum rates shown on the application for hail insurance. If the current rates are reduced later the state board of hail insurance shall arrange for the proper refund to the insured. All cash

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received by the assessor shall be promptly turned over to the county treasurer who will furnish the insured with a current receipt and place the money in the hail insurance fund.

(3) Provided, however, any grain grower unable to secure state hail insurance under the provisions of this act on account of delinquent taxes, or for other reasons, may make application to the county assessor of his respective county and said county assessor is hereby authorized to receive and accept such applications where the applicant furnishes a sufficient crop lien subject only to a seed lien; provided that such crop lien shall be accepted only under such rules, regulations and requirements as may be prescribed by the state board of hail insurance and providing that the state board of hail insurance may cancel any hail insurance accepted in violation of said rules, regulations and requirements. Upon receipt of said application the county assessor shall make record thereof and shall file the original in the office of the clerk and recorder of said county. He shall also cause an assessment for the proper amount to be made on the assessment rolls in the same manner provided for in the case of other special levies or assessments.

Provided, further, that no tenant who has delinquent hail insurance which was secured by a crop lien only and not secured by real estate shall be allowed another policy in any succeeding year until he pays his delinquent account or accounts, or until he pays cash for the current hail insurance.

History: En. Sec. 3, Ch. 40, L. 1923;
amd. Sec. 3, Ch. 54, L. 1931; amd. Sec. 1,
Ch. 37, L. 1943.

82-1504. Hail insurance secured by crop lien only. When any hail insurance issued under this act is secured by a crop lien only said crop lien is hereby declared a first lien on the insured crop, except only any crop lien which may have been given to secure the purchase price for the seed which was bought and used to plant and produce the insured grain.

History: En. Sec. 3, Ch. 37, L. 1943.

82-1505. Reinsurance. Because of the unusual or unexpected variation in the severity of damage to grain crops which occur from year to year and in order to enable the state hail insurance fund to spread the effect of these variations more evenly over all years, the state board is hereby authorized to negotiate for and to secure reinsurance of a part of the risk in any year when the need of such reinsurance appears advisable to the board. The state board is hereby authorized to use moneys from the hail insurance fund for the purchase of such reinsurance whenever it appears to the board that such reinsurance is necessary and advisable.

History: En. Sec. 3, Ch. 37, L. 1943.

82-1506. (351) Tax for hail insurance—limitation on levy—liens, effect of—mortgages—levies, when payable—hail insurance districts—rates. (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate as near as may be possible, the amount required to pay all losses, interest on warrants and costs of administration, and shall recommend a levy to be made on each kind of

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land respectively, subject to the provisions of this act, to the state board of equalization; provided, however, that such tax shall not exceed in any one (1) year the sum of one dollar (\$1.00) per acre on lands sown to grain crops, nor fifty cents (50c) per acre on lands sown to hay crops; and provided further, that if the tax required to pay the estimated losses, interest on warrants and costs of administration be less than fifty cents (50c) per acre on lands sown to grain crops and a proportionate amount on lands sown to hay crops, the said board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

(2) In addition to the lien created above on the land of the insured, the levy for such hail insurance shall also constitute a lien on the crops insured with the exception that the said crop lien shall not apply to owners of unencumbered land, or on the land or crops of those who pay cash for hail insurance. The applications of these shall not be filed with the county clerk and recorder as provided for in section 82-1503.

The crop lien mentioned above shall be included in all applications for hail insurance and shall be enforced, as provided in sections 82-1509 and 82-1510, against all insured, except those owning unencumbered land or those who have paid cash for hail insurance.

(3) The said board of equalization is hereby empowered and it is made its duty to prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively shall be chargeable to the lands of each taxpayer who shall elect to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. Provided, however, that the lien as provided above shall in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured, by the county treasurer in the same manner as are all other notices of taxes due. Said assessment shall be payable at the office of the county treasurers of each respective county. All hail insurance levies whether levied against land, or in the form of special assessments secured by crop liens, shall be payable in full, and not in semi-annual payments, on or before November the thirtieth (30) of each year in which such levies are made.

(4) The state board of hail insurance may when they deem it advisable establish as many districts as it deems advisable and may maintain maximum rates in various parts of the state which rates shall be commensurate with the risk incurred as nearly as they can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest shall not be less than fifty cents (50c) per acre on lands sown to grain crops, and a

proportionate amount on lands sown to hay crops. Notice of the various rates established for any year shall be plainly printed on the applications for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the state board of hail insurance for each of the various districts as established, in such proportions as will in their judgment be fair and equitable.

History: En. Sec. 2, Ch. 169, L. 1917; 1921; amd. Sec. 4, Ch. 40, L. 1923; amd. amd. Sec. 1, Ch. 34, L. 1919; amd. Sec. 2, Sec. 1, Ch. 54, L. 1931.
Ch. 141, L. 1921; re-en. Sec. 351, R. C. M.

82-1507. (352) Scope and object of levy—reserve fund. (1) In making the levy provided in the preceding section the state board of hail insurance shall provide for:

1. The payment of all expenses of administration, together with all interest owed or to be owing on registered warrants.

2. For that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve fund.

3. For the maintenance of the reserve fund, a part or all of which may be used in any one year for the purpose of paying the costs of administration, interest on the warrants and losses as the same shall be settled and adjusted by the said board including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

- (2) Whenever the losses together with the expenses and costs of administration in any one year shall amount to a less amount than the sum of seventy-five cents (75c) per acre for every acre of grain insured and a proportionate amount on hay crops, the state board of hail insurance may levy such amount as they may consider proper and just for the purpose of providing a reserve fund, providing, however, that such levy when added to the amount necessary to pay costs of administration, interest and losses for the current year shall not exceed the sum of seventy-five cents (75c) per acre on lands sown to grain crops and a proportionate amount on hay crops and provided further that in any one year there shall not be added to the reserve fund an amount greater than the sum of five per cent (5%) of the total risk for that particular year and provided further, that the amount of said reserve fund shall not exceed the sum of one million dollars.

- (3) The reserve fund hereby created shall be a continuous fund and the state board of hail insurance is hereby granted the power to draw from said fund such amounts as it may deem necessary for the purpose of paying costs of administration, interest and losses, and provided further, that whenever there are no unpaid losses for prior years and whenever in any one year the cost of administration, interest and losses for the current year shall be less than the sum of fifty cents (50c) per acre on land sown to grain crops, and a proportionate amount on hay crops, the state board of hail insurance shall not draw on the reserve fund for any purpose unless the amount required for the payment of losses for the current year,

interest on warrants and costs of administration shall exceed the amount of the estimate made by the state board of hail insurance.

History: En. Sec. 2, Ch. 34, L. 1919;
re-en. Sec. 352, R. C. M. 1921; amd. Sec. 5,
Ch. 40, L. 1923; amd. Sec. 1, Ch. 8, L. 1929.

82-1508. (353) Withdrawal of crop in case of destruction through other means. When any crop insured under this act shall have been destroyed by any other cause than hail, the applicant may, by furnishing the proof required by the state board of hail insurance, cause the crop to be withdrawn from the regular levy of the state board for the current year. Such proof shall be submitted to the state board of hail insurance in accordance with its rules and regulations. Said rules and regulations shall be plainly printed on the applications and policies issued by the department. They shall provide that the cost for such withdrawn insurance shall be varied as nearly as practical according to the time the insurance is in force and according to the risk carried.

History: En. Sec. 3, Ch. 34, L. 1919; 353, R. C. M. 1921; amd. Sec. 2, Ch. 54, L. amd. Sec. 3, Ch. 141, L. 1921; re-en. Sec. 1931.

82-1509. (354) Collection of levies—release of lien—compromise. The county treasurer in each county in the state, shall collect all levies made under this act in the same manner as other property taxes are collected and shall keep all moneys collected by him, or for him, for hail insurance in a separate fund to be known as the hail insurance fund, and remit the same to the state treasurer in the same manner as provided by law for the remittance of other moneys due to the state. All county treasurers shall use due diligence in making the collections of the levies provided herein. Also the state board may furnish assistance needed at any time in making collections or may take over the collection of any levy at any time, depositing any collections therefrom with the treasurer of the county where the levy therefor was made. Whenever the amount due on any hail insurance secured by a crop lien is paid the treasurer shall promptly endorse on the lien on file in the office of the county clerk and recorder the amount paid thereon with the date of payment and such endorsement shall be a satisfaction and release of such lien.

If any tenant becomes delinquent for his hail insurance after having failed to apply for relief as provided by the state board under section 82-1508, he may apply to the board for a reduction. If his reasons for requesting a reduction are approved by the board, this board may reduce his charge to not less than one-half the original amount charged.

History: En. Sec. 3, Ch. 169, L. 1917; 354, R. C. M. 1921; amd. Sec. 6, Ch. 40, L. amd. Sec. 4, Ch. 34, L. 1919; re-en. Sec. 1923; amd. Sec. 2, Ch. 37, L. 1943.

82-1510. (354.1) Foreclosure of lien. If the person receiving hail insurance secured by a crop lien fails to pay said insurance to the county treasurer by January first of the year following the year in which the crop so insured is grown the county treasurer shall after the first day of January deliver to the sheriff of said county a full, true and correct copy of the lien on file in the office of the clerk and recorder and such sheriff must immediately demand from the person or persons signing such lien, payment of the amount due thereon, and if the same is not paid to the sheriff upon

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such demand being made, the sheriff must forthwith seize and sell in the manner provided by law for the sale of personal property under execution, a sufficient amount of grain belonging to such person to pay the amount due for hail insurance together with interest and costs and expenses of seizure and sale.

History: En. Sec. 7, Ch. 40, L. 1923. **Cross-Reference**

Hail insurance, lien on crop, sec. 45-705.

82-1511. (355) State treasurer, duty of—funds—transfer of funds—warrants. The state treasurer shall receive all monies paid to him under this act and shall place same to the credit of a fund to be known as the state hail insurance fund and may from time to time transfer to the hail insurance administrative fund such sums as the state board may deem necessary and proper to pay the expenses of administration together with such sums as may be needed to pay all the warrants registered against the hail insurance administrative fund, plus the accrued interest thereon, and shall pay out of such funds on warrants drawn by the state auditor by order of the state board of hail insurance. If such warrants be presented and there be no money in the said funds to pay the same, such warrants shall be registered and thereafter bear interest at the rate of four per cent per annum until called for payment by the state treasurer. All interest and earnings obtained by the state treasurer for such monies shall be credited to the respective funds. If at any time more funds are in the administrative fund than the board estimates are needed for the purposes mentioned above, the state treasurer may on the order of the state board of hail insurance transfer such funds back to the hail insurance fund as the state board may direct.

History: En. Sec. 4, Ch. 169, L. 1917; 355, R. C. M. 1921; amd. Sec. 8, Ch. 40, L. amd. Sec. 1, Ch. 183, L. 1921; re-en. Sec. 1923.

82-1512. (356) Duty of county assessor—election of benefits of law. It shall be the duty of each county assessor in the state, at the time in which the annual assessment of property is made, to explain to each taxpayer engaged in the growing of crops subject to injury or destruction by hail, the provisions of this act and the protection afforded thereby, and to request each such taxpayer to certify, on the forms provided for such purpose, if such taxpayer desires to become subject to this act and liable for the tax levies provided hereby, and thereby eligible to the benefits and protection of this act; and each such taxpayer who so elects to become subject to this act shall be liable for the taxes levied for hail insurance, and shall participate in the benefits and protection afforded by this act; provided, that the owners of lands worked by others under lease or contract shall elect if such lands shall be subject to the tax levies herein provided for, and the crops grown thereon protected for hail insurance, or the lessee of such land may tender payment of the tax levied for hail insurance to protect his crops, in cash, to the officer authorized to receive same, whereupon such crops shall become eligible to the benefits and protection afforded by this act for hail insurance.

History: En. Sec. 5, Ch. 169, L. 1917;
re-en. Sec. 356, R. C. M. 1921.

82-1513. (357) What crops subject to provisions of law. The crops grown on the lands of all taxpayers who shall elect to become subject to this act, shall be insured under the provisions of this act for the acreage and the kind of crop for which taxes for hail insurance will have been levied, which insurance shall be provided for, determined, and adjusted and paid for as provided by this act.

History: En. Sec. 6, Ch. 169, L. 1917;
re-en. Sec. 357, R. C. M. 1921.

82-1514. (358) Report of losses. That all losses by hail to crops insured under this act shall be reported within three (3) days thereafter by the owner of such crops, his agent or attorney to the state board of hail insurance, who shall require the claimant to make a statement of the losses sustained, the cause thereof and such other information as the state board of hail insurance may require, on the forms to be provided for such purpose.

History: En. Sec. 7, Ch. 169, L. 1917;
re-en. Sec. 358, R. C. M. 1921; amd. Sec.
9, Ch. 40, L. 1923.

82-1515. (359) Appraisers—appointment—qualifications and duties. The state board of hail insurance shall, as soon as practicable, each year appoint three men in each county to appraise all losses by hail incurred under this act in the various counties. The men so appointed shall be actively engaged in farming or shall have had practical experience in farming and shall be selected from names submitted by regularly organized farmers societies in the various counties. If the recommendations are not made as provided above, then the state board shall select the appraisers from men actively engaged in farming or men who have had practical experience in farming as heretofore provided. Provided, further, that the state board of hail insurance may call on one or more of the duly appointed appraisers for the adjustment of each and every loss and the said appraisers shall promptly report their findings to the state board of hail insurance, according to the rules provided by the said state board. Provided, further, that no appraiser who shall be a relative, attorney, agent, employee or creditor or in any manner interested by lien, mortgage or otherwise in the crop injured or destroyed, shall assist in adjusting any such loss. The state board may in case of emergency appoint more than three appraisers in any county. Also it may send any duly appointed appraiser or appraisers into any county as the occasion may require.

History: En. Sec. 8, Ch. 169, L. 1917;
amd. Sec. 5, Ch. 34, L. 1919; amd. Sec. 4,
Ch. 141, L. 1921; re-en. Sec. 359, R. C. M. 1921.

References
Crosby v. State Board of Hail Insurance,
113 M 470, 472, 129 P 2d 99.

82-1516. (360) Appointment of appraisers in case of dissatisfaction with official adjustment. (1) In case the party that has sustained the loss is dissatisfied with and refuses to accept the adjustments made by the official appraisers then he shall have the right to appeal to the state board of hail insurance, provided however, he shall make such appeal by registered mail within four (4) days after such disagreement. In case the adjuster who makes the second appraisal fails to secure an agreement the claimant shall then appoint one disinterested person as appraiser, and the official appraiser

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shall appoint another person as appraiser, and the two shall select a third disinterested person, and the three shall then proceed to adjust the loss in the same manner as specified in section 82-1515 and the judgment of the majority shall be the judgment of said appraisers and shall be binding upon both parties as the final determination of said loss; provided, however, that if the insured does not recover a greater sum than allowed by the official appraiser in the first instance, he shall pay the expenses of the said three appraisers and their witnesses in making said adjustment, but if he is awarded a larger sum then the same shall be paid by the state board of hail insurance out of the hail insurance fund.

(2) If the insured shall be required to pay the expenses of such re-appraisement as above provided, the state board of hail insurance is hereby authorized to deduct the amount of such expenses from the amount allowed said insured before making settlement for said loss.

Provided, also, that where any claimant demands arbitration he shall, if required by the board, furnish a cash bond to the state board of hail insurance in the sum of ten dollars, (\$10.00) which shall accompany his application. If there is not sufficient allowance made to any claimant after arbitration to cover the cost of arbitration without the use of the ten dollars, (\$10.00) forfeit, then the state board may use a part or all of said cash bond. Any forfeits so collected shall be placed promptly in the state hail insurance fund. In cases where the claimant secures an increase the bond shall be promptly returned to the claimant.

(3) The state board of hail insurance shall examine all reports of appraisers and verify the same, and adjust all losses, and for such purposes may order hearings, subpoena witnesses, and conduct examinations and do all things necessary to secure a fair and impartial appraisal of losses by hail.

History: En. Sec. 9, Ch. 169, L. 1917; amd. Sec. 6, Ch. 34, L. 1919; re-en. Sec. 360, R. C. M. 1921; amd. Sec. 10, Ch. 40, L. 1923.

Operation and Effect

Held, that this section provides the sole and exclusive statutory remedy available to an insured dissatisfied with the award of appraisers, and an action against the state board is not available; the members of a board of arbitrators must be disinterested parties, and are more than

mere appraisers (exercising a power judicial in nature, the basis of whose decision is not limited to information gained from inspection only, but they may hear evidence including that of the parties); where, in the instant case, it appeared that arbitration was prevented by the naming of an improper person on the board, judgment was reversed, the cause dismissed, and the board ordered to name a proper person as arbitrator. *Crosby v. State Board of Hail Insurance*, 113 M 470, 129 P 2d 99.

82-1517. (361) Payment of losses. (1) The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the losses as follows: From the amount of the loss as adjusted for each claimant the state board of hail insurance shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year, and shall make settlement within forty (40) days from the time loss is sustained in the following manner: By paying, either by registered warrant or otherwise if funds are immediately available, fifty per cent of the total loss as agreed on, less, however, the maximum rate of the assessment; balance to be paid at the expiration of the hail season.

(2) The state board of hail insurance, shall on or before November first, order the state auditor to draw a warrant for the amount so deducted on the state hail insurance fund, which warrant shall be remitted to the county treasurer of the county in which the tax was assessed. The state board of hail insurance shall then order the state auditor to draw a warrant on the state hail insurance fund for the balance of the adjustment which warrant shall be sent to the claimant; provided, however, that in no case shall the payment for loss exceed ten dollars (\$10.00) per acre for grain crops, and five dollars (\$5.00) per acre for hay crops; provided, further, that no claimant shall receive payment for any loss incurred where said loss does not exceed five per cent (5%) of the total value of the crop insured. Also if the losses in any year should exceed the current levy plus the reserve fund, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved, and the unpaid balance of said losses shall be paid out of the reserve fund without interest in such order as the state board of hail insurance shall direct, when in the judgment of the said board there are in said fund sufficient moneys to provide for the payment of the same and other items payable out of said funds. In any year the state board of hail insurance may by resolution authorize its chairman and secretary to borrow as needed from any person, bank or corporation such sum or sums of money as the state board may deem necessary to carry on the business of the department and for the purpose of paying all warrants as issued.

(3) For any monies borrowed under the provisions of this act, the state board of hail insurance shall cause warrants to be drawn against the state hail insurance fund and said warrants shall bear interest at not to exceed six per cent (6%) per annum and said warrants and the interest thereon shall be paid out of funds from the state hail insurance department as they are collected from the various counties in the state. The state board of hail insurance shall not at any time borrow a total sum greater than the amount of the levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer. The state board of examiners is hereby empowered to invest surplus money belonging to any fund in the warrants of the hail insurance fund.

History: En. Sec. 10, Ch. 169, L. 1917; 1921; amd. Sec. 11, Ch. 40, L. 1923; amd. amd. Sec. 7, Ch. 34, L. 1919; amd. Sec. 5, Sec. 2, Ch. 8, L. 1929.
Ch. 141, L. 1921; re-en. Sec. 361, R. C. M.

82-1518. (362) Who may elect to become subject to provisions of law. Any taxpayers or associations of taxpayers engaged in the growing of crops, other than specified herein, or other agricultural or horticultural products subject to injury or destruction by hail, by their individual or joint election filed with and approved by the state board of hail insurance, may accept the provisions of this act, and elect to become subject thereto, and in such event such risks may be classified by the said board and suitable levies imposed as may be agreed upon by the said board and such taxpayers, whereupon such taxpayers shall be entitled to the benefits and protection afforded by the insurance provisions of this act.

History: En. Sec. 11, Ch. 169, L. 1917;
re-en. Sec. 362, R. C. M. 1921.

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L. '51, c. 53
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82-1519. (363) Compensation of chairman and officers—financial report. It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. The chairman of the state board of hail insurance shall receive a salary of two hundred and fifty dollars, (\$250.00) per month while actually engaged in service and actual traveling expenses, and all appointive officers under this act shall be paid their actual traveling expenses and shall be allowed such per diem as the state board of hail insurance may determine for each day of eight hours while actually engaged in service under this act, out of the hail insurance administrative fund.

The chairman of the state board of hail insurance shall each year submit a full financial report of the operations of the department to the governor of the state.

History: En. Sec. 12, Ch. 169, L. 1917; Insurance 13½; States 60, 62.
amd. Sec. 2, Ch. 183, L. 1921; re-en. Sec. 44 C.J.S. Insurance § 44; 59 C.J. States
363, R. C. M. 1921; amd. Sec. 12, Ch. § 249.
40, L. 1923; amd. Sec. 1, Ch. 165, L. 1929.

82-1520. (363.1) Benefits exempt from execution, etc. All money or benefits received from hail insurance shall be exempt from execution and shall not be liable to attachment nor to be seized, taken nor appropriated by any local process to pay any debt or liability of the insured unless the amount shall be assigned and then for no more than the amount of the claim intended to be secured by the assignment with lawful interest.

History: En. Sec. 13, Ch. 40, L. 1923. Exemptions 37.
35 C.J.S. Exemptions §§ 26, 31, 43, 51, 57.

CHAPTER 16

LABORATORY COMMISSION

- Section 82-1601. State laboratory commission created—members designated.
82-1602. Terms of office—compensation of members.
82-1603. Created to make plans for laboratory building.
82-1604. Location and equipment of building.
82-1605. Planning, what included.
82-1606. Continuing jurisdiction of commission.

82-1601. State laboratory commission created—members designated. A state laboratory commission of seven members is hereby created and established consisting, ex-officio, of the following officials of the state of Montana: The chief engineer of the state highway commission; the chief engineer of the state water conservation board; the executive officer of the state board of health; the executive officer of the state livestock sanitary board; the state purchasing agent; the commissioner of agriculture, labor and industry; and the attorney general.

History: En. Sec. 1, Ch. 78, L. 1945.

82-1602. Terms of office—compensation of members. The members of said commission shall hold office until the commission is changed, or abolished, by the legislative assembly; they shall serve as such commission without compensation other than the salaries now or hereafter provided by law, to be paid said officers. The members of the commission shall, however, be

paid their actual traveling, and other expenses necessarily incurred by them in discharging their duties, under this act.

History: En. Sec. 2, Ch. 78, L. 1945.

82-1603. Created to make plans for laboratory building. The state laboratories commission is created for the purpose of making plans for the construction and equipping of a modern and efficient laboratory building designed to meet the requirements of the various state departments of Montana, which need laboratory testing and research facilities to efficiently perform their functions.

History: En. Sec. 3, Ch. 78, L. 1945.

82-1604. Location and equipment of building. Said laboratory building shall be erected on land now owned, or hereafter to be acquired by the state of Montana. Said building shall be erected and equipped for laboratory purposes as soon as the war emergency will permit, and when materials and labor are available, and a sufficient legislative appropriation of funds is had.

History: En. Sec. 4, Ch. 78, L. 1945.

82-1605. Planning, what included. The plans contemplated in this act shall include the determination of the size, design, location and furnishing of said laboratory building; the examination of other similar buildings, and the gathering of full information necessary for the designing, building and equipping of a laboratory of the character specified in this act. The commission shall, also, have authority to employ such architectural or other technical assistance as it may deem necessary in planning for a laboratory building of the kind contemplated in this act. No action shall be taken nor recommendations made except by unanimous agreement of the members of the state laboratory commission.

History: En. Sec. 5, Ch. 78, L. 1945.

82-1606. Continuing jurisdiction of commission. To insure maximum service to the citizens of Montana, and to the various state departments and institutions using said laboratory facilities, the state laboratories commission shall continue as a supervisory and determining board, having jurisdiction over the operation of said building and its laboratory facilities.

History: En. Sec. 6, Ch. 78, L. 1945.

CHAPTER 17

LIEUTENANT GOVERNOR

Section 82-1701. Duties of lieutenant governor.
82-1702. Compensation.
82-1703. Same—when acting as governor.

82-1701. (130) Duties of lieutenant governor. The duties of the lieutenant governor are prescribed in article VII of the constitution.

History: En. Sec. 390, Pol. C. 1895; States 42.
re-en. Sec. 150, Rev. C. 1907; re-en. Sec. 59 C.J. States § 136.
130, R. C. M. 1921. Cal. Pol. C. Sec. 396. 24 Am. Jur. 827, Governor, §§ 8 et seq.

82-1702. (131) Compensation. The lieutenant governor receives the same per diem and mileage as the speaker of the house of representatives, and that only during the session of the legislative assembly.

History: En. Sec. 391, Pol. C. 1895; code, in *Wade v. Lewis and Clark County*,
re-en. Sec. 151, Rev. C. 1907; re-en. Sec. 24 M 335, 338, 61 P 879.
131, R. C. M. 1921. Cal. Pol. C. Sec. 397.

References

States 60.

Cited or applied as section 391, political 59 C.J. States § 249.

82-1703. (132) Same—when acting as governor. When the lieutenant governor acts as governor, he is entitled to receive during the time he so acts, the compensation which the governor, if acting, would be entitled to receive for such time; but during such time he is not entitled, as lieutenant governor, to any other compensation or mileage.

History: En. Sec. 392, Pol. C. 1895;
re-en. Sec. 152, Rev. C. 1907; re-en. Sec.
132, R. C. M. 1921.

ReferencesStates ex rel. *Lamey v. Mitchell*, 97 M
252, 257, 34 P 2d 369.

CHAPTER 18

MARSHAL OF SUPREME COURT

- Section 82-1801. Marshal of the supreme court.
82-1802. Duties of the marshal.
82-1803. Salary and mileage.
82-1804. Accounts of marshal.

82-1801. (366) Marshal of the supreme court. The supreme court must appoint a marshal of the supreme court, who holds the office at the pleasure of the court.

History: En. Sec. 862, Pol. C. 1895;
re-en. Sec. 295, Rev. C. 1907; re-en. Sec.
366, R. C. M. 1921; amd. Sec. 1, Ch. 38,
L. 1939.

Courts 58.

21 C.J.S. Courts § 142.

82-1802. (367) Duties of the marshal. It shall be the duty of the marshal to attend upon the supreme court and the justices thereof at each term of court. He shall be the executive officer of the court, and act as crier thereof. He must serve within the state all returns and processes issuing from the supreme court and shall have all the powers and exercise all the duties pertaining to sheriffs as to the district courts so far as the same are applicable. He shall act as a law clerk for the supreme court justices.

History: En. Sec. 863, Pol. C. 1895; 367, R. C. M. 1921; amd. Sec. 2, Ch. 38,
re-en. Sec. 296, Rev. C. 1907; re-en. Sec. L. 1939.

82-1803. (368) Salary and mileage. The annual salary of the marshal of the supreme court for all services now required of him shall be fixed, at that figure the supreme court shall deem reasonable, provided that the salary per annum shall not exceed twenty-four hundred dollars (\$2400.00), by the supreme court of the state of Montana. When serving process of court beyond the place where the court is held, in cases in which the state, a county, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf of the state, county, or subdivision thereof, is not a party, the marshal is entitled to receive the same mileage as provided by law for sheriffs in performing similar services, to be taxed as costs, as in other cases; in cases in which the state, a county, or any subdivision thereof, or any officer when prosecuting or defending an action on behalf of the state, a county, or any subdivision thereof, is the real party in interest, he

shall be entitled to receive his actual expenses incurred in serving such process, to be paid from the fund appropriated for expenses of the supreme court not otherwise provided for.

History: Ap. p. Sec. 4, p. 210, L. 1891; 1919; re-en. Sec. 368, R. C. M. 1921; amd. re-en. Sec. 297, Rev. C. 1907; amd. Sec. 1, Sec. 3, Ch. 38, L. 1939. Ch. 62, L. 1913; amd. Sec. 1, Ch. 52, L.

82-1804. (369) Accounts of marshal. All accounts of the marshal must be filed in the supreme court in a bill of items under oath certified by the chief justice, and when properly chargeable against the state and approved by the state board of examiners, must be paid out of the state treasury upon the warrant of the state auditor.

History: En. Sec. 865, Pol. C. 1895; re-en. Sec. 298, Rev. C. 1907; re-en. Sec. 369, R. C. M. 1921.

CHAPTER 19

PURCHASING DEPARTMENT AND AGENT

- Section 82-1901. Creation of state purchasing department and agent—bond and salary.
 82-1902. Duties of state purchasing agent—contingent funds for state departments.
 82-1903. Maintenance of warehouses.
 82-1904. Authority to purchase.
 82-1905. Payment for purchases by state agent.
 82-1906. Contracts for printing and supplies.
 82-1907. Compensation and bond of employees.
 82-1908. Agent may require tests.
 82-1909. Furnishing of stationery, etc., for departments of state.
 82-1910. Supervision of public printing.
 82-1911. Property returns.
 82-1912. Inventory—property to be charged to persons receiving.
 82-1913. Advertising for bids required—low bidder to receive contract.
 82-1914. Sale of state property and products of state institutions.
 82-1915. Contracts for supplies of state agencies.
 82-1916. Printing and publications.
 82-1917. Requisitions for supplies—manner of letting contracts.
 82-1918. Contracts limited to one year.
 82-1919. Purchase of fresh fruits and vegetables—emergency purchases.
 82-1920. Impartiality to be shown in letting contracts—preference to residents.
 82-1921. Record of bids—contracts.
 82-1922. Transfer of contract forbidden—agreement between bidders invalidates contracts—interest in contracts by officers forbidden—penalty.
 82-1923. Inspection of property and warehouses of state.

82-1901. (284) Creation of state purchasing department and agent—bond and salary. There is hereby created, of and for the state of Montana, a department to be known as the state purchasing department. Said department shall be in charge of a state officer to be known as the state purchasing agent. He shall be appointed by the governor and shall hold office at the pleasure of the governor. He shall be a civil executive officer. He shall execute to the state of Montana a bond in the penal sum of ten thousand dollars for the faithful discharge of the duties of his office. He shall receive a salary of five thousand dollars per annum, and all necessary traveling expenses to be paid upon proper vouchers.

History: En. Sec. 1, Ch. 197, L. 1921; re-en. Sec. 284, R. C. M. 1921.

References
 Miller Ins. Agency v. Porter et al., 93 M 567, 577, 20 P 2d 643.

Tit. 82, c. 19
 Office of State
 Controller
 created
 L. '51, c. 194
 Secs. 1-17
 pp. 440-449

Tit. 82, c. 19
 Rel. matter
 L. '51, c. 174
 Secs. 1, 2
 pp. 349-352

Tit. 82, c. 19
 82-1901 to
 82-1923
 Ref. to
 L. '51, c. 82
 Sec. 1, p. 144

82-1901
 Amended
 L. '51, c. 194
 Sec. 12, p. 447

States 45, 46, 48, 60.

59 C.J. States §§ 143½, 186, 202, 249.

82-1902
Rel. matter
L. '51, c. 174
Secs. 1, 2
pp. 349-352

82-1902. (285) Duties of state purchasing agent—contingent funds for state departments. The state purchasing agent shall, under the restrictions of this act, have full and sole power and authority and it shall be his duty upon approval of the state board of examiners to contract for and purchase or direct and supervise the purchase and sale of all supplies of whatever nature necessary for the proper transaction of the business of each and every state department, commission, board, institution, or official. For the purpose of making such purchases and contracts the state purchasing agent shall be and is hereby made the purchasing agent of and for each and every state department, commission, board, institution and official. Provided, the state board of examiners may provide a contingent fund for each state department, commission, board, institution, or official, in a sum to be fixed by the state board of examiners, to be used in the payment of urgent contingent expenses that may be necessary for the conduct of the business of such department, commission, board, institution, or official, such expenditures to be thereafter examined and approved by the state board of examiners.

History: En. Sec. 2, Ch. 197, L. 1921;
re-en. Sec. 285, R. C. M. 1921.

References

Northern Pac. Ry. Co. v. Sanders County, 66 M 608, 614, 214 P 596; Miller Ins. Agency v. Porter et al., 93 M 567, 577, 20 P 2d 643.

Cross-References

Petroleum products, authority to buy and sell, sec. 60-302.

State fair, duties concerning, sec. 80-504.

States 73, 127.

59 C.J. States §§ 118 et seq., 285 et seq.

82-1903. (286) Maintenance of warehouses. The state purchasing agent shall have the power and authority, subject to the approval of the state board of examiners, to maintain warehouses and to rent or lease, or construct the same, and to issue such rules and regulations as may be necessary for the proper and economical conduct of the business of the state purchasing agent; provided, such contract and such purchase shall have first met the approval of the state board of examiners before being made.

History: En. Sec. 3, Ch. 197, L. 1921;
re-en. Sec. 286, R. C. M. 1921.

States 86.

59 C.J. States § 118 et seq.

43 Am. Jur. 764, Public Works and Contracts, §§ 23 et seq.

References

Miller Ins. Agency v. Porter et al., 93 M 567, 20 P 2d 643.

82-1904. (287) Authority to purchase. An estimate or requisition presented by the department, commission, board or state official in control of the appropriation or fund against which such contract or purchase is to be charged, must be approved by the state purchasing agent, and this shall be full authority for any contract and any purchase made by the state purchasing department; provided, however, that no purchase shall be made by the state purchasing department of any furniture, fixtures, apparatus or equipment for any department, board, commission or office until the estimate or requisition for the purchase thereof has been submitted to the state board of examiners and an order made by such board authorizing the purchase thereof.

History: En. Sec. 4, Ch. 197, L. 1921;
re-en. Sec. 287, R. C. M. 1921; amd. Sec. 1,
Ch. 17, L. 1925; amd. Sec. 1, Ch. 51, L.
1939.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

States~~C~~93.

59 C.J. States § 285 et seq.

82-1905. (288) Payment for purchases by state agent. All valid claims on account of such contract and purchases negotiated by the state purchasing agent shall be audited and paid from the sums severally set aside for the use of the state purchasing department by the contract and purchase estimate or requisition upon the sworn statement of the executive officer of the department, commission, board, or institution, or the state official in control of the appropriation or fund, together with the sworn statements of the state purchasing department, and said sworn statements of said executive officer and state purchasing department, after approval by the state board of examiners shall be full and sufficient authority for the state auditor to draw his warrant and the treasurer to pay the same against any appropriation or fund in the treasury available for the purpose of any such contract and purchase.

History: En. Sec. 5, Ch. 197, L. 1921;
re-en. Sec. 288, R. C. M. 1921.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

States~~C~~107.

59 C.J. States § 403.

82-1906. (289) Contracts for printing and supplies. The state purchasing agent shall have exclusive power, subject to the consent and approval of the state board of examiners, to contract for all printing and to purchase, sell, or otherwise dispose of, or to authorize, regulate and control the purchase, sale or other disposition of, all materials and supplies, service, equipment, and other physical property of every kind, required by any state institution or by any department of the state government; and to purchase or cause to be purchased all needed commissary supplies, and all raw material and tools necessary for any manufacturing carried on at any of said institutions; and to sell all manufactured articles, and collect the money for the same, and generally to regulate and control all purchases by any department of the state government, or by any state institution; and also to furnish, repair, and maintain the executive residence for the governor. The state purchasing agent shall remit to the state treasurer all moneys received from the sale of property belonging to the state of Montana, said moneys to be by the treasurer credited to the general fund.

History: En. Sec. 6, Ch. 197, L. 1921;
re-en. Sec. 289, R. C. M. 1921.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

States~~C~~94.

59 C.J. States § 291.

82-1907. (290) Compensation and bond of employees. The state purchasing agent shall have the power, with the approval of the state board of examiners, to appoint and fix the compensation and amount of bonds of

such additional employees as the proper and economical conduct of the business of the state purchasing department may demand.

History: En. Sec. 7, Ch. 197, L. 1921; States 53.
re-en. Sec. 290, R. C. M. 1921. 59 C.J. States §§ 188, 207.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

82-1908. (291) Agent may require tests. The state purchasing agent shall have the authority to require any department of the state of Montana or of any of the educational institutions of the state to perform any tests as may be required by the state purchasing department for the better information of the state purchasing agent in determining the character and quality of the articles and commodities to be purchased and used by the state.

History: En. Sec. 8, Ch. 197, L. 1921; States 93.
re-en. Sec. 291, R. C. M. 1921. 59 C.J. States § 118 et seq.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

82-1909. (292) Furnishing of stationery, etc., for departments of state. All stationery, printing, paper, fuel and lights used in the legislative and other departments of government, shall be furnished, and the printing, and binding and distribution of the laws, journals, and department reports and other printing and binding, and the repairing and furnishing the halls and rooms used for the meeting of the legislative assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder; and all such contracts shall be let by the state purchasing agent, but shall be subject to the approval of the board of examiners. Before any such contract is let the state purchasing agent must advertise in such manner and for such time as he deems proper for sealed proposals to furnish any and all supplies mentioned in this section. The state purchasing agent must specify in the advertisement the amount and kind of each article required. The proposals received must be directed to the state purchasing agent, who must, unless he rejects all bids, award the contract for furnishing such supplies, or any of them, to the lowest responsible bidder.

History: En. Sec. 9, Ch. 197, L. 1921; States 98.
re-en. Sec. 292, R. C. M. 1921. 59 C.J. States § 296 et seq.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

82-1910. (293) Supervision of public printing. The state purchasing agent shall supervise and attend to all public printing and shall prevent duplication and unnecessary printing; all forms, blanks, and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his library; and the state purchasing agent shall from time to time furnish to the

public general information as to the nature, description, and official numbers of such reports as are available for public distribution.

History: En. Sec. 10, Ch. 197, L. 1921; States 94.
re-en. Sec. 293, R. C. M. 1921. 59 C.J. States § 291.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

82-1911. (293.1) Property returns. All persons in charge of any state property, must, upon request of the state purchasing agent, furnish him with a sworn statement of all personal property in his possession or under his charge belonging to the state of Montana, together with an estimate of the value thereof, and must also furnish such other information in connection therewith, as the state purchasing agent shall require.

History: En. Sec. 1, Ch. 66, L. 1923. States 86.
59 C.J. States § 278.

References

Miller Ins. Agency v. Porter et al., 93
M 567, 577, 20 P 2d 643.

82-1912. (293.2) Inventory—property to be charged to persons receiving. From the report so made to the state purchasing agent, he must on or before June 30th, 1923, prepare a complete inventory for each state department, office, board, commission or institution, of all personal property belonging to the state of Montana, in charge or possession of such department, office, board, commission and institution, each such inventory to show in detail the estimated value of the items embraced therein, and each state department, office, board, commission and institution must be charged with all items of personal property and all other personal property thereafter placed at the disposal of any such state department, office, board, commission and institution, and shall be credited with all worn out, used, lost, injured or destroyed property from time to time, as may be reported to the state purchasing agent, and shall be held responsible for all items of personal property not accounted for.

History: En. Sec. 2, Ch. 66, L. 1923.

82-1913. (293.3) Advertising for bids required—low bidder to receive contract. The state purchasing agent in making purchase of supplies and equipment under the provisions of this act, or under the laws of the state of Montana must advertise as hereinafter provided, and award contracts in the name of the state of Montana for such supplies and equipment to the lowest responsible bidder, except as hereinafter provided.

History: En. Sec. 3, Ch. 66, L. 1923.

Unfair Practices Act Also Applicable

Held, that ch. 80, l. 1937 (51-101 et seq.), known as the unfair practices act, in the absence of an express exception in favor of those selling to the state, applies to sales made to the state, and failure of the legislature to amend this section providing for purchases of state supplies from the lowest bidder, is not indicative of its intention to except sales to the state from operation of the act, and that when one

is read in connection with the other, it is contemplated that sellers to the state will confine their bids within the limit fixed as legitimate by the unfair practices act. *Helena Automobile Dealers Assn. v. Anderson*, 110 M 1, 3, 98 P 2d 371.

States 98.

59 C.J. States § 297.

43 Am. Jur. 764, Public Works and Contracts, §§ 23 et seq.

Bidder's variation from specifications on bid for public work. 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law. 69 ALR 697.

Rights and remedies of bidder for public contract who has not entered into a contract, where bid was based on his own mistake of fact or that of his employees. 80 ALR 586.

Change in proposals for public contract after submission of bid as justification for withdrawal of bid or refusal to enter into contract. 104 ALR 1149.

Statute requiring competitive bidding for public contract as affecting validity of agreement, subsequent to the award of the contract, to allow the contractor additional compensation for extras or additional labor and material not included in the written contract. 135 ALR 1265.

82-1914. (293.4) Sale of state property and products of state institutions. The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to sell, or otherwise dispose of, or to authorize the sale or other disposition of, all materials and supplies, service, equipment, or other personal property of every kind now owned by the state of Montana, but not needed or used by any state institution or by any department of the state government; and to sell all articles, produce or crops produced, manufactured, made or grown in any state institution and to collect the money for same, except such portion of such articles, produce or crops as may be used or consumed in such institution; each state institution shall keep and submit to the state purchasing agent, at least once each year or oftener if demanded, a list of such articles, produce or crops used or consumed therein and if any part thereof has theretofore been inventoried, as in this act hereinbefore provided, then such institution shall be given credit therefor. The state purchasing agent shall remit to the state treasurer all moneys received from the sale of property belonging to the state of Montana, said moneys to be by the treasurer credited to the general fund. True and correct lists of all articles, produce and crops sold with the names of the purchasers, their addresses and sums received therefor, shall be prepared and kept on file in the office of the state purchasing agent, which list shall at all times be subject to inspection by the public.

History: En. Sec. 4, Ch. 66, L. 1923.

States—89.
59 C.J. States § 280.

82-1915. (293.5) Contracts for supplies of state agencies. Unless otherwise provided by law, the state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to let to the lowest bidders and enter into contracts with the lowest bidders, for the furnishing of all supplies, stationery, paper, fuel, water, lights, and other articles required by the legislative assembly and all other offices, departments, boards, commissions and institutions of the state.

Before any such contract is let, the state purchasing agent must advertise in such manner and for such time as in this act provided for sealed proposals for all such supplies or services mentioned in this section.

History: En. Sec. 5, Ch. 66, L. 1923.

States—98.
59 C.J. States §§ 118, 296.

82-1916. (293.6) Printing and publications. The state purchasing agent shall have exclusive power, subject to the consent and approval of the governor, to contract for all printing for any purpose used by the state of Montana in any state office, elective or appointive or by any state board,

commission, bureau, state institution or department and shall supervise and attend to all public printing of the state of Montana in the manner in this act provided, and shall prevent duplication and unnecessary printing; all forms, blanks and documents printed for distribution to the departments of the state government or state institutions shall be serially numbered and indexed by the state purchasing agent and sample copies of each thereof permanently retained in his office; and the state purchasing agent shall from time to time furnish to the public general information as to the nature, description and official numbers of such reports as are available for public distribution.

Unless otherwise provided by law, the state purchasing agent in letting contracts as provided in this act, for the printing, binding and publishing of all laws, journals and reports of the various offices, departments, boards, commissions and institutions of the state, shall have the power to determine the quantity, quality, style and grade of all such printing, binding and publishing. Provided, that all reports for any fiscal year required by law to be published, must be submitted to the governor before November 1st, of each year, for approval, correction or modification, and when by the governor approved, as corrected or modified, must by him be certified to the state purchasing agent for publication, provided, the governor may require all such reports or any number of them, to be published in one volume, such publication to be completed on or before the tenth day of January thereafter.

And provided further, any such reports so published, in one volume may also be separately published in pamphlet form, in such number as may be directed by the governor.

History: En. Sec. 6, Ch. 66, L. 1923.

States 94.

59 C.J. States § 291.

82-1917
(293.7 RCM
'35)
Amended
SL. 49, C. 69
Sec. 2, P. 149

82-1917. (293.7) Requisitions for supplies—manner of letting contracts.

(1) State officers, commissioners of boards, or departments, superintendents of state institutions or departments shall tabulate in detail the amount of supplies on hand at the beginning of each quarter and the additional supplies needed for the ensuing quarter. The state purchasing agent shall make examination of the amount of supplies on hand and shall determine from such examination and from the statements so furnished him, as in this section provided, the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of said state purchasing agent shall be subject to approval of the governor. As soon as the state purchasing agent shall determine, as in this section provided, what kind of supplies and the amount necessary for the state of Montana to purchase for its state offices, boards, commissions, departments or institutions, he shall thereupon give notice in daily newspapers of general circulation in the state of Montana and published in different localities therein, for at least 20 days that sealed proposals will be received by the state purchasing department, up to a time to be mentioned therein, for furnishing supplies for such state offices, boards, commissions, departments or institutions, which notice shall also state that detailed statements of supplies to be furnished are on file at the office of the state purchasing department and subject to inspection, and shall also specify

that at a certain time, to be therein mentioned, said proposals will be opened, and contracts awarded to the lowest responsible bidder.

(2) Each proposal shall be accompanied by sample supplies proposed to be furnished, ample in quantity, to be divided, a part thereof, in case of award, to be kept in the office at the capitol and a part thereof, in case of award, to be sent to the place of intended delivery. The proposals shall be in writing, sealed and marked, "Proposals for furnishing supplies," and shall be addressed to the State Purchasing Agent, Helena, Montana. There shall be separate proposals and separate contracts for each class of material furnished. At the time mentioned in the said notice said proposals shall be opened, in public, and contracts awarded to the lowest responsible bidder. The department shall have the right to reject any and all bids. If all of such proposals shall be rejected, proposals shall again be invited and proceeded with in the same manner.

(3) With any proposal the state purchasing agent may require a certified check on some responsible bank, payable to the treasurer of the state of Montana, equal in amount to 5 per cent of the sum of such proposal, as a guarantee for the faithful performance of any contract awarded. In case no award is made to the party the check shall be returned to him when a contract has been duly signed and bond approved. All proposals shall include the delivery of the supplies to the departments and institutions for which they are purchased.

The state officers, superintendents, commissioners, departments or institutions, shall not have the authority to purchase any supplies or material, except on approval of the state purchasing agent.

History: En. Sec. 7, Ch. 66, L. 1923.

States 98.

59 C.J. States § 296 et seq.

82-1918. (293.8) Contracts limited to one year. No contracts shall be made for a longer period than one year and such contract shall provide for the delivery of such articles at such times and in such quantities as the purchasing agent may determine.

History: En. Sec. 8, Ch. 66, L. 1923.

States 100.

59 C.J. States § 293.

82-1919. (293.9) Purchase of fresh fruits and vegetables—emergency purchases. Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as hereinbefore provided. The state purchasing agent may allow, under proper rules, regulations and instructions approved by the state board of examiners, any state officer, board, commission or superintendent of state institution to purchase the fresh fruits and vegetables therefor, and make other and minor purchases for the same; an itemized account to be kept of all such purchases and furnished to the state purchasing department.

Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and in the manner in which such articles are usually bought and sold or such services engaged between individuals, but under the direction of the state purchasing agent and subject to the approval of the state board of examiners.

History: En. Sec. 9, Ch. 66, L. 1923.

States⇨94.

59 C.J. States § 292.

What is an "emergency" within statutory provision excepting emergency contract or work from requirement of bidding on public contracts. 71 ALR 173.

82-1920. (293.10) Impartiality to be shown in letting contracts—preference to residents. The state purchasing agent, or any officer or employee thereof, shall have no right to show any partiality or favoritism in making such awards or contracts, but shall be absolutely fair and impartial; provided that where both the bids and quality of goods offered are the same, preference shall be given to articles of local and domestic production and manufacture, and provided, further that where both the bids and the quality of goods offered are the same, preference shall be given to resident bidders of the state of Montana over nonresident bidders.

History: En. Sec. 10, Ch. 66, L. 1923.

States⇨98.

59 C.J. States § 300.

82-1921. (293.11) Record of bids—contracts. The state purchasing department shall have recorded in a book kept for that purpose, a true and faithful abstract of all bids made for furnishing supplies and equipment for the state of Montana, giving the name of the party bidding, the terms of the offer, the sum to be paid, and shall keep on file and preserve all such bids until the end of the contract term to which they relate. Each bidder shall have the right to be present, either in person or by agent, when the bids are opened and shall have the right to examine and inspect all bids. All purchases, advertisements and contracts for supplies for any purpose authorized by law shall be made by the state purchasing department in the name of the state of Montana. The records shall be open at all times for the inspection of those who may be interested in such contracts made or to be made with the state of Montana.

History: En. Sec. 11, Ch. 66, L. 1923.

States⇨98.

59 C.J. States § 296.

82-1922. (293.12) Transfer of contract forbidden—agreement between bidders invalidates contracts—interest in contracts by officers forbidden—penalty. No contract or order or any interest therein shall be transferred by the party to whom such contract or order is given to any other party, and any such transfer shall cause the annulment of the contract so transferred, at the option of the state. Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state of Montana in the awarding of contracts is hereby prohibited, and the state purchasing agent and state board of examiners if they shall find sufficient evidence after any contract has been let that said contract was obtained by any bidder or bidders, by reason of collusive or secret agreement among the bidders to the disadvantage of the state of Montana, shall have the right to declare any such contract null and void.

All rights of action, however, for any breach of such contract by the contracting parties are reserved to the state. No member of the legislature, nor any elective or appointive state officer, nor any deputy or employee thereof, nor superintendent of any state institution or any employee thereof, nor any person in the employ of the state of Montana in any capacity whatsoever, shall directly, himself, or by any other person in trust for him

or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Montana under the provisions of this act, and every person who violates the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not less than \$100 nor to exceed the sum of \$5,000.

History: En. Sec. 12, Ch. 66, L. 1923.

States◊95, 98, 105.

59 C.J. States §§ 296 et seq., 321.

Relation as creditor of contracting party
as constituting interest within statute

against public officer being interested in public contract. 73 ALR 1352.

Relationship as disqualifying interest within statute making it unlawful for an officer to be interested in a public contract. 74 ALR 792.

82-1923. (293.13) Inspection of property and warehouses of state. The warehouses, supplies, furnishings and property of all kinds used in and about the business of the state of Montana, shall be subject at all times to the inspection and examination of the state purchasing department and any officer or employee of any office, board, commission or department.

History: En. Sec. 13, Ch. 66, L. 1923.

States◊86.

59 C.J. States § 278.

CHAPTER 20

REPORTERS OF DECISIONS OF SUPREME COURT—PUBLICATION AND DISTRIBUTION OF REPORTS

- Section 82-2001. Justices of supreme court to report decisions.
82-2002. Duties of reporters.
82-2003. Reports of the supreme court, style of publication.
82-2004. Contract with publisher.
82-2005. Title of reports.
82-2006. Price—bond of publisher.
82-2007. Distribution of reports.

82-2001. (378) Justices of supreme court to report decisions. The persons who may be and are justices of the supreme court shall report the decisions of the supreme court. They shall each receive an annual salary of one thousand five hundred dollars, payable in the same manner as are salaries of other state officers, which said salaries shall be in full compensation for the performance of the duties of reporting the decisions of said court.

History: En. Sec. 2, p. 72, L. 1899; re-en. Sec. 314, Rev. C. 1907; re-en. Sec. 378, R. C. M. 1921. Cal. Pol. C. Secs. 767-782.

Constitutionality

This section held constitutional under art. VIII, secs. 29 and 30 declaring that no justice of the supreme court shall accept or receive any compensation, allowance, etc., "Except the salary provided by law," and empowering the legislature to change their salary; and under art. VIII, sec. 35 providing that no justice shall hold any other office than the one to which he was elected, the office of reporter not carrying a delegation of sovereign power. Tipton v. Sands, 103 M 1, 13, 60 P 2d 662.

Court Acts as Public Board of Awards

In considering bids and awarding a contract under secs. 82-2001 to 82-2007, the members of the supreme court, to let such contract, act not as a court, but as a board of awards and as such are subject to all the statutory provisions relating to public boards of like nature. State ex rel. Helena Allied Printing Council v. Mitchell, 105 M 326, 332, 74 P 2d 417.

Decisions May Not Be Copyrighted

Relators' contention that others than Bancroft-Whitney Company are prohibited by the copyright laws from publishing the old Montana reports is entirely without merit. Anything contained in an opinion prepared and published by the court can-

82-2001
(378 RCM '35)
Amended
SL. '49, C. 182
Sec. 2, P. 390

not be copyrighted. *State ex rel. Helena Allied Printing Council v. Mitchell*, 105 M 326, 339, 74 P 2d 417.

Defense of Good Faith

On a charge with a violation of the corrupt practices act for campaigning on publication that if elected, he would refuse the salary for reporting decisions provided for in this section on ground it was unconstitutional, held, that the defense of good faith was sustained by evidence, in view of the fact that there was reasonable ground for believing that this section was unconstitutional. *Tipton v. Sands*, 103 M 1, 17, 60 P 2d 662.

Not Repealed by Implication

The fact that sec. 75-410 was amended by ch. 43, laws of 1905 increasing the salary of justice of the supreme court to \$6,000 from \$4,000, which amending act provided that "all acts and parts of acts in conflict herewith are hereby repealed," but no act of the legislature expressly repeals sec. 82-2001 supra, and the acts not plainly irreconcilably repugnant or in conflict, held not repealed by implication. *Tipton v. Sands*, 103 M 1, 14, 60 P 2d 662.

Reports—3.

54 C.J. Reports §§ 14, 17.

82-2002. (379) Duties of reporters. The reporters of the decisions of the supreme court shall make careful and accurate reports of the cases decided by the supreme court. The reports of such cases shall contain syllabi of the points decided; a statement of the facts taken from the record, when the same are not fully given in the opinion of the court; the names of counsel; and a reference to such authorities as are cited in the briefs of counsel and have special bearing on the case. It shall be the further duty of said reporters to prepare a full and comprehensive index and tables of cases reported to each volume of said reports.

History: En. Sec. 891, Pol. C. 1895; re-en. Sec. 307, Rev. C. 1907; re-en. Sec. 379, R. C. M. 1921; amd. Sec. 1, Ch. 174, L. 1947.

54 C.J. Reports § 16.

14 Am. Jur. 261, Courts, § 22.

Incompatibility of officers of supreme court reporter and internal and military service. 26 ALR 143.

Reports—3.

82-2003. (380) Reports of the supreme court, style of publication. The reports must be published in volumes of not less than six hundred pages each, in the size and style of Volume 2, Montana Reports, and equal in quality, press work, and binding to said volume.

History: En. Sec. 892, Pol. C. 1895; re-en. Sec. 308, Rev. C. 1907; re-en. Sec. 380, R. C. M. 1921; amd. Sec. 1, Ch. 1, L. 1925.

Reports—4.

54 C.J. Reports § 4.

82-2004. (381) Contract with publisher. The justices shall have no pecuniary interest in the volumes of reports. The reports must be published by contract to be entered into by the justices and with the publishing house that will agree to publish the new volumes of the Montana reports for a period of six (6) years, and furnish to the state and the people of the state at prices fixed in the contract any volume or volumes printed by such publishers. In the contract the justices may, at their discretion, require the publisher to agree to furnish complete sets or odd volumes of the Montana reports from and including volume one to the last volume published, to the state and the people of the state at prices fixed in the contract. Such contract shall require the publisher to print each volume in accordance with the specifications set forth in the preceding section. It shall also require the publisher to issue each new volume within ninety (90) days after the manuscript for the same is delivered by the justices to the said publisher. Such contract shall also require the publisher to make stereotype

matrices of each volume so published by him, and to preserve these matrices in fire proof vaults, to the end that the volumes will never become out of print. The publisher receiving the contract as herein provided shall, before commencing the publication of the volumes of such reports, advertise in two (2) newspapers in Montana for ten (10) days for proposals for such printing, stereotyping, and binding of such volumes, and such publisher shall, if the proposals for such work do not exceed by the sum of twenty percent (20%), the amount for which the same can be done outside of the state, cause such printing, stereotyping and binding to be done within the state of Montana.

History: En. Sec. 893, Pol. C. 1895; re-en. Sec. 309, Rev. C. 1907; re-en. Sec. 381, R. C. M. 1921; amd. Sec. 2, Ch. 1, L. 1925; amd. Sec. 1, Ch. 111, L. 1943.

Constitutionality

This section does not violate the provisions of art. V, secs. 26 and 30, nor of art. XV, sec. 20 of the Montana state constitution. State ex rel. Helena Allied Printing Council v. Mitchell, 105 M 326, 338, 340, 74 P 2d 417.

Id. Where a Montana printing concern, attempting to bid on a contract for publication of Montana reports, declined to submit a bid in the matter of furnishing copies of previous volumes published, on ground that the provisions of this section therefor were unconstitutional as in effect

granting a monopoly to the publishing house which had held the contract for a long time, held, that the contention may not be sustained for reasons set forth in the opinion.

Sections Being on a Parity

This section was not impliedly repealed by sec. 82-1157; if Montana printing concerns should desire to offer competing bids, both sections are on a parity and capable of being so construed and both may stand. State ex rel. Helena Allied Printing Council v. Mitchell, 105 M 326, 334, 74 P 2d 417.

Reports—4.

54 C.J. Reports §§ 4, 11.

82-2005. (382) Title of reports. The title of each volume shall be "Montana Reports", which title, together with the number of the volume, shall be printed on the back of each book.

History: En. Sec. 894, Pol. C. 1895; 382, R. C. M. 1921; amd. Sec. 1, Ch. 139, re-en. Sec. 310, Rev. C. 1907; re-en. Sec. L. 1947.

82-2006. (383) Price—bond of publisher. Said contract shall require the publisher to agree to sell three hundred copies of each new volume of said reports to the state of Montana at the price agreed upon in said contract, and to keep on hand and for sale at the contract price a sufficient number of copies of each volume to supply all demands for six years from the date of the publication thereof. And said publisher shall give bond for the fulfillment of the terms of this contract in the sum of five thousand dollars, which bond shall be filed with the clerk of the supreme court and be approved by the justices of the supreme court, or a majority thereof.

History: En. Sec. 895, Pol. C. 1895; Reports—4.
re-en. Sec. 311, Rev. C. 1907; re-en. Sec. 54 C.J. Reports § 5.
383, R. C. M. 1921; amd. Sec. 3, Ch. 1, L. 1925.

82-2007. (384) Distribution of reports. On the publication of each volume of said reports the secretary of state shall purchase of said publisher, for the use of the state, three hundred copies thereof, and shall distribute the same in the manner following: To the law libraries of each state and territory of the United States, one copy; to the Library of Congress, five copies; to each of the judges of the United States district courts of the

states of Idaho, Nevada, California, Washington, Montana, Wyoming, and Oregon, one copy; to each state officer, justice of the supreme court, district judge, county attorney and clerk of the district court in this state, one copy; to the law library of the State of Montana, three copies. He shall also distribute said reports to literary and scientific institutions, publishers and authors and legislative reference libraries of other states with whom the state law librarian has established or may hereafter establish a system of exchange. He shall also distribute to the University of Montana not to exceed fifty copies to be used by the law librarian of the state university for the purpose of exchanges with universities and institutions of higher education in other states. All reports distributed to state, district, and other officers in the state shall be for the use of their office, and shall be, by the person receiving the same, turned over to his successor in office, and the secretary of state shall take proper receipts for such reports.

History: En. Sec. 896, Pol. C. 1895;
re-en. Sec. 312, Rev. C. 1907; amd. Sec. 1,
Ch. 203, L. 1921; re-en. Sec. 384, R. C. M.
1921; amd. Sec. 3, Ch. 46, L. 1937.

Reports⇒5.
54 C.J. Reports § 4 et seq.

CHAPTER 21

INTERGOVERNMENTAL COOPERATIVE COMMITTEES

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| Section | 82-2101. Senate committee on intergovernmental cooperation established. |
| | 82-2102. House committee on intergovernmental cooperation established. |
| | 82-2103. Governor's committee on intergovernmental cooperation established. |
| | 82-2104. Montana commission on intergovernmental cooperation established. |
| | 82-2105. Senate and house council of American Legislators' Association. |
| | 82-2106. Functions of commission. |
| | 82-2107. Delegations and committees to be established. |
| | 82-2108. Committee reports—compensation—employees. |
| | 82-2109. Informal titles. |
| | 82-2110. Council of State Governments joint agency. |
| | 82-2111. Text of act—communication to other states. |

82-2101. Senate committee on intergovernmental cooperation established. There is hereby established a standing committee of the senate of this state, to be officially known as the senate committee on intergovernmental cooperation, and to consist of five senators. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the senate. In addition to the regular members, the president of the senate shall be ex officio an honorary nonvoting member of this committee.

History: En. Sec. 1, Ch. 86, L. 1937.

States⇒34.
59 C.J. States § 74 et seq.

82-2102. House committee on intergovernmental cooperation established. There is hereby established a similar standing committee of the house of representatives of this state, to be officially known as the house committee on intergovernmental cooperation, and to consist of five members of the house of representatives. The members and the chairman of this committee shall be designated in the same manner as is customary in the case of the members and chairmen of other standing committees of the house of representatives. In addition to the regular members, the speaker of the house

of representatives shall be ex officio an honorary nonvoting member of this committee.

History: En. Sec. 2, Ch. 86, L. 1937.

82-2103. Governor's committee on intergovernmental cooperation established. There is hereby established a committee of administrative officials and employees of this state to be officially known as the governor's committee on intergovernmental cooperation, and to consist of five members. Its members shall be: The budget director or the corresponding official of this state, ex officio; the attorney general, ex officio; the chief of the staff of the state planning board or the corresponding official of this state, ex officio; and two other administrative officials or employees to be designated by the governor. If there is uncertainty as to the identity of any of the ex officio members of this committee, the governor shall determine the question, and his determination and designation shall be conclusive. The governor shall appoint one of the five members of this committee as its chairman. In addition to the regular members, the governor shall be ex officio an honorary nonvoting member of this committee.

History: En. Sec. 3, Ch. 86, L. 1937.

States 45.

59 C.J. States § 143½.

82-2104. Montana commission on intergovernmental cooperation established. There is hereby established the Montana commission on intergovernmental cooperation. This commission shall be composed of fifteen regular members, namely:

The five members of the senate committee on intergovernmental cooperation;

The five members of the house committee on intergovernmental cooperation; and

The five members of the governor's committee on intergovernmental cooperation.

The governor, the president of the senate and the speaker of the house of representatives shall be ex officio honorary nonvoting members of this commission. The chairman of the governor's committee on intergovernmental cooperation shall be ex officio chairman of this commission.

History: En. Sec. 4, Ch. 86, L. 1937.

plication of compacts and statutes involving cooperation between states. 134 ALR 1411.

Constitutionality, construction, and ap-

82-2105. Senate and house council of American Legislators' Association. The said standing committee of the senate and the said standing committee of the house of representatives shall function during the regular sessions of the legislature and also during the interim periods between such sessions; their members shall serve until their successors are designated; and they shall respectively constitute for this state the senate council and house council of the American Legislators' Association. The incumbency of each administrative member of this commission shall extend until the first day of February next following his appointment, and thereafter until his successor is appointed.

History: En. Sec. 5, Ch. 86, L. 1937.

States 34, 45.

59 C.J. States §§ 74 et seq., 143½.

82-2106. Functions of commission. It shall be the function of this commission:

(1) To carry forward the participation of this state as a member of the Council of State Governments.

(2) To encourage and assist the legislative, executive, administrative and judicial officials and employees of this state to develop and maintain friendly contact by correspondence, by conference, and otherwise, with officials and employees of the other states, of the federal government, and of local units of government.

(3) To endeavor to advance cooperation between this state and other units of government whenever it seems advisable to do so by formulating proposals for, and by facilitating:

(a) The adoption of compacts;

(b) The enactment of uniform or reciprocal statutes;

(c) The adoption of uniform or reciprocal administrative rules and regulations;

(d) The informal cooperation of governmental offices with one another;

(e) The personal cooperation of governmental officials and employees with one another, individually;

(f) The interchange and clearance of research and information; and

(g) Any other suitable process.

(4) In short, to do all such acts as will, in the opinion of this commission, enable this state to do its part—or more than its part—in forming a more perfect union among the various governments in the United States and in developing the Council of State Governments for that purpose.

History: En. Sec. 6, Ch. 86, L. 1937.

States ⇨ 67.

59 C.J. States § 143½.

82-2107. Delegations and committees to be established. The commission shall establish such delegations and committees as it deems advisable, in order that they may confer and formulate proposals concerning effective means to secure intergovernmental harmony, and may perform other functions for the commission in obedience to its decisions. Subject to the approval of the commission, the member or members of each such delegation or committee shall be appointed by the chairman of the commission. State officials or employees who are not members of the commission on intergovernmental cooperation may be appointed as members of any such delegation or committee, but private citizens holding no governmental position in this state shall not be eligible. The commission may provide such other rules as it considers appropriate concerning the membership and the functioning of any such delegation or committee. The commission may provide for advisory boards for itself and for its various delegations and committees, and may authorize private citizens to serve on such boards.

History: En. Sec. 7, Ch. 86, L. 1937.

82-2108. Committee reports—compensation—employees. The commission shall report to the governor and to the legislature within fifteen (15) days after the convening of each regular legislative session, and at such other times as it deems appropriate. Its members and the members of all delegations and committees which it establishes shall serve without com-

pensation for such service, but they shall be paid their necessary expenses in carrying out their obligations under this act. The commission may employ a secretary and a stenographer; it may incur such other expenses as may be necessary for the proper performance of its duties, and it may, by contributions to the Council of State Governments, participate with other states in maintaining the said council's district and central secretariats, and its other governmental services.

History: En. Sec. 8, Ch. 86, L. 1937.

States 60, 67.

59 C.J. States § 249 et seq.

82-2109. Informal titles. The committees and the commission established by this act shall be informally known, respectively, as the senate cooperation committee, the house cooperation committee, the governor's cooperation committee and the Montana cooperation commission.

History: En. Sec. 9, Ch. 86, L. 1937.

82-2110. Council of State Governments joint agency. The Council of State Governments is hereby declared to be a joint governmental agency of this state and of the other states which cooperate through it.

History: En. Sec. 10, Ch. 86, L. 1937.

States 66.

59 C.J. States §§ 13, 14.

82-2111. Text of act—communication to other states. The secretary of state shall forthwith communicate the text of this measure to the governor, to the senate, and to the house of representatives, of each of the other states of the union, and shall advise each legislature which has not already done so that it is hereby memorialized to enact a law similar to this measure, thus establishing a similar commission, and thus joining with this state in the common cause of reducing the burdens which are imposed upon the citizens of every state by governmental confusion, competition and conflict.

History: En. Sec. 11, Ch. 86, L. 1937.

CHAPTER 22

SECRETARY OF STATE

Section	82-2201.	Custody of records.
	82-2202.	Duties of secretary of state.
	82-2203.	Distribution of senate and house journals and session laws.
	82-2204.	To mark books distributed.
	82-2205.	To receive and keep supplies.
	82-2206.	Form of documents.
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	82-2208.	Exceptions to application of law.
	82-2209.	Secretary of state to number bills in the order of filing.
	82-2210.	Publication of laws—index.
	82-2211.	Description of county boundaries included in session laws.
	82-2212.	Expenses incurred, how paid.
	82-2213.	Official bond.

82-2201. (133) Custody of records. The secretary of state is charged with the custody:

1. Of the enrolled copy of the constitution.
2. Of all the acts and resolutions passed by the legislative assembly.
3. Of the journals of the legislative assembly.
4. Of the great seal.

5. Of all books, records, deeds, parchments, maps, and papers, kept or deposited in his office pursuant to law.

History: En. Sec. 400, Pol. C. 1895; States 73.
re-en. Sec. 153, Rev. C. 1907; re-en. Sec. 59 C.J. States § 142.
133, R. C. M. 1921. Cal. Pol. C. Sec. 407.

82-2202. (134) Duties of secretary of state. In addition to the duties prescribed by the constitution, it is the duty of the secretary of state:

1. To attend at every session of the legislative assembly, for the purpose of receiving bills and resolutions thereof, and to perform such other duties as may be devolved upon him by resolution of the two houses, or either of them.

2. To keep a register of and attest the official acts of the governor.

3. To affix the great seal, with his attestation, to commissions, pardons, and other public instruments to which the official signature of the governor is required.

4. To record in proper books all conveyances made to the state, and all articles of incorporation filed in his office.

5. To receive and record in proper books the official bonds of all the state officers, and then deliver the originals to the state treasurer.

6. To take and file in his office receipts for all books distributed by him, and to direct the county clerk of each county to do the same.

7. To certify to the governor the names of those persons who have received at any election the highest number of votes for any office, the incumbent of which is commissioned by the governor.

8. To furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in his office.

9. To deliver to the printer entitled to the same, at the earliest day practicable after the final adjournment of each session of the legislative assembly, copies of all laws, resolutions (with marginal notes), and journals, kept, passed, or adopted at such session, with proper indexes to the same.

10. To notify in writing, the county attorney of the proper county of the failure of any officer in his county to file in his office the sworn statement of fees received by such officer.

11. To present to the legislative assembly, at the commencement of each session thereof, a full account of all purchases made and expenses incurred in furnishing fuel, lights and stationery.

12. To keep a fee book, in which must be entered all fees, commissions, and compensation of whatever nature or kind by him earned, collected, or charged, with the date, name of payer, paid or unpaid, and the nature of the service in each case, which book must be verified annually by his affidavit entered therein.

13. To file in his office descriptions of seals in use by the different state officers, and furnish such officers with new seals whenever required.

14. To discharge the duties of member of the state board of examiners, of member of the state board of prison commissioners, of member of the state board of pardons, of member of the state board of land commissioners, of member of state board of commissioners of insane, deaf, dumb, and blind,

and state sealer of weights and measures, and all other duties required of him by law.

15. To report to the governor, at the time prescribed in section 59-702 a detailed account of all official actions since his previous reports, and accompanying the report with a detailed statement, under oath, of the manner in which all appropriations for his office have been expended; and to report as provided in section 59-705.

16. To receive, designate, and record trade-marks as provided in section 85-102.

17. He must distribute the bound volumes of the decisions of the supreme court, in the manner provided by section 82-2007.

History: En. Sec. 401, Pol. C. 1895; States 73.
 re-en. Sec. 154, Rev. C. 1907; re-en. Sec. 59 C.J. States § 140 et seq.
 134, R. C. M. 1921. Cal. Pol. C. Sec. 408. 49 Am. Jur. 265, States, Territories and
 Dependencies, § 53.

NOTE.—Subdivision 17 changed in this code to conform to later amendments.

82-2203. (135) Distribution of senate and house journals and session laws. Immediately after the senate and house journals and the session laws mentioned in subdivision nine of the preceding section are bound, the secretary of state must distribute the same as follows:

1. To the county clerk of each county one copy of the senate journal and one copy of the house journal for the use of the county.

2. To the state historical library such number of copies of the senate and house journals, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange; to the state law librarian, two copies of each house and of each senate journal for the use of said library, and such additional copies as may be necessary for the purposes of exchange; and to the library of congress, two copies of each house and of each senate journal.

3. To the lieutenant governor, each member of the legislative assembly, secretary of the senate and chief clerk of the house of representatives at the session at which the laws and journals were adopted, one copy.

He shall distribute the session laws as follows:

1. To each department of the government at Washington, and of the government of this state, one copy.

2. To the library of congress, eight copies; and to the state library, two copies.

3. To the state historical and miscellaneous library, two copies; to the state law librarian, four copies for the use of said state law library.

4. To the law libraries and the legislative reference libraries of each of the states and territories such number of copies as are given by them in exchange with the Montana state law library and the legislative reference libraries.

5. To the members of congress, to the United States district judge, to each of the judges of the supreme and district courts, and to each of the state officers of the state, one copy.

6. To the lieutenant governor, each member of the legislative assembly, secretary of the senate, and chief clerk of the house of representatives at the session at which laws and journals were adopted, one copy.

7. To each of the incorporated colleges of the state and to each unit of the state university and institutions, one copy; to the law librarian of the state of Montana as many copies as may be required by him for exchange with libraries and institutions maintained by other states, territories and public libraries.

8. To the county clerk of each county, three copies for the use of the county.

9. To each county attorney, and to each clerk of the district court, one copy.

History: En. Sec. 1, Ch. 86, L. 1907; States 73; Statutes 38.
 Sec. 155, Rev. C. 1907; amd. Sec. 1, Ch. 126, 59 C.J. States § 142; 59 C.J. Statutes
 L. 1921; Sec. 135, R. C. M. 1921; amd. Sec. § 136 et seq.
 1, Ch. 22, L. 1929; amd. Sec. 1, Ch. 46,
 L. 1937. Cal. Pol. C. Sec. 409.

82-2204. (136) To mark books distributed. The secretary of state must indelibly mark each book distributed to officers in this state (except legislative officers), with the name of the county to which, and the official designation of the officer to whom it is sent. Such marked books remain the property of the state, and must be, by the officers receiving them, delivered to their successors.

History: En. Sec. 403, Pol. C. 1895; States 73.
 re-en. Sec. 156, Rev. C. 1907; re-en. Sec. 59 C.J. States § 142.
 136, R. C. M. 1921. Cal. Pol. C. Sec. 411.

82-2205. (137) To receive and keep supplies. It is the duty of the secretary of state to receive and keep all supplies and articles purchased by the board of examiners as a board of supplies, and he must issue to any state officer or board, on the requisition of the board of examiners, any stationery, book, or other supplies, and take a receipt therefor, and file said requisition and receipt in his office. He must keep a book called a "book of supplies," and enter therein a complete list of all stationery, books, articles, or other supplies furnished him under contracts made by such board, making a separate list of each class of articles, and all purchases made by the board, the amount and cost of each article furnished each state officer or board, and each member of the legislative assembly. He must embody in his report to the legislative assembly a statement taken from such book, showing the amount of supplies purchased and disposed of.

History: En. Sec. 405, Pol. C. 1895; States 73.
 re-en. Sec. 158, Rev. C. 1907; re-en. Sec. 59 C.J. States § 140 et seq.
 137, R. C. M. 1921. Cal. Pol. C. Sec. 413.

82-2206. (138) Form of documents. As to their form, the public documents of the state of Montana shall be published under the direction of the secretary of state, with the view to such uniformity of size, quality of paper, type, and other particulars as will permit them to be formed in continuous numbers in consecutive volumes, and before any public printer or other person shall print any public document appropriate to be published in pamphlet or book form, the pay for which is to come from some public or municipal treasury, the proper party to print the same shall submit the copy to the secretary of state, who shall give such directions as to the form and quality of the work and the paging thereof as will permit it to be bound with other preceding or subsequent documents of like character, to the end

that the same may be preserved in the archives of the state without confusion and for the convenience of its citizens.

History: En. Sec. 406, Pol. C. 1895; States 94.
re-en. Sec. 159, Rev. C. 1907; re-en. Sec. 59 C.J. States § 142.
138, R. C. M. 1921.

82-2207. (139) Series of documents. The secretary of state shall divide the public documents to be published into several series, according to their several subjects, so near as may be, and no moneys shall be paid out of the treasury except on compliance herewith for any printing or publishing aforesaid.

History: En. Sec. 407, Pol. C. 1895;
re-en. Sec. 160, Rev. C. 1907; re-en. Sec.
139, R. C. M. 1921.

82-2208. (140) Exceptions to application of law. The provisions of this act shall not apply to the decisions of the supreme court, the contributions of the historical society, nor to bills printed for the legislative assembly, or other printing for its use during its session, not appropriate to be put in pamphlet form.

History: En. Sec. 408, Pol. C. 1895;
re-en. Sec. 161, Rev. C. 1907; re-en. Sec.
140, R. C. M. 1921.

82-2209. (141) Secretary of state to number bills in the order of filing. It shall be the duty of the secretary of state, when bills passed by any legislative assembly of the state of Montana are filed in his office, as directed in sections 43-502 and 43-503, to note thereon the date of said filing, and to number such bills, except resolutions, memorials, and bills appropriating money, in the order of their reception by him, chapter 1, and upwards, using Arabic numerals for such numbering.

History: En. Sec. 1, Ch. 17, L. 1903; Statutes 37.
re-en. Sec. 162, Rev. C. 1907; re-en. Sec. 59 C.J. Statutes § 122 et seq.
141, R. C. M. 1921.

82-2210. (142) Publication of laws—index. The secretary of state, in pursuance of subdivision 9 of section 82-2202, shall cause such laws as are therein specified, except resolutions, memorials, and bills appropriating money, to be printed with the heading of each law,

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numbered from 1 upward, using Arabic numerals for such numbering, and he shall omit from the laws the statement "Senate Bill No....." and "House Bill No." and hereafter reference to the laws of any legislative session may be made as follows: "Chapter..... (giving number) of the laws of....." (giving the year in which same was enacted). Such laws shall be published in their numerical order, from 1 upward, as same have been filed in his office, and in such manner that each section shall have a side head or marginal summary, and that the chapter number shall appear as part of each page heading; provided, that resolutions, memorials, and bills appropriating money shall be printed in the latter part of the volume containing the said laws, in the form and manner heretofore practiced in publishing such laws; and provided further, in all enrolled bills containing amend-

ments to existing statutes, the new parts having been designated by underlining, shall be printed in italics. The secretary of state shall also have prepared and published with said laws, and bound in the same volume, a suitable index of the same, and an additional index showing what sections of the several codes of this state have been amended, repealed, altered, or changed by any of the laws published in that volume, which shall be known and designated as the "Code Index."

History: En. Sec. 2, Ch. 17, L. 1903; re-en. Sec. 163, Rev. C. 1907; re-en. Sec. 142, R. C. M. 1921; amd. Sec. 1, Ch. 10, L. 1939.

NOTE.—See section 44-122, which makes it the duty of the state law librarian to prepare indexes for the session laws.

Statutes↔38.

59 C.J. Statutes § 136 et seq.

82-2211. (143) Description of county boundaries included in session laws. It shall be the duty of the secretary of state to include in the session laws of the state of Montana published by him a description of the county boundaries of all new counties of the state of Montana created by petition and election, commencing with counties so created on and after January 1, 1921, inserting in each of said session laws such new counties as have been so created since the publication of the acts of the previous session.

History: En. Sec. 1, Ch. 67, L. 1921; re-en. Sec. 143, R. C. M. 1921.

82-2212. (144) Expenses incurred, how paid. The expenses incurred by the secretary of state in carrying into effect the provisions of sections 82-2202 to 82-2205 inclusive must be audited by the board of examiners, and paid out of any moneys specially appropriated for the purpose.

History: En. Sec. 409, Pol. C. 1895; re-en. Sec. 164, Rev. C. 1907; re-en. Sec. 144, R. C. M. 1921. States↔123.
59 C.J. States § 376 et seq.

82-2213. (148) Official bond. The secretary of state must execute an official bond in the sum of ten thousand dollars.

History: En. Sec. 412, Pol. C. 1895; re-en. Sec. 169, Rev. C. 1907; re-en. Sec. 148, R. C. M. 1921. States↔48.
59 C.J. States § 198 et seq.

CHAPTER 23

STOCK COMMISSIONER AND STATE VETERINARY SURGEON

Section 82-2301. Powers and duties of the livestock commission, livestock sanitary board and state veterinary surgeon.

82-2301. (231) Powers and duties of the livestock commission, livestock sanitary board and state veterinary surgeon. The appointment, powers and duties of the livestock commission, livestock sanitary board, and state veterinary surgeon are defined by sections 46-201 to 46-244.

History: Sec. 218, Rev. C. 1907; section rewritten by code commissioner 1921; re-en. Sec. 231, R. C. M. 1921. Animals↔15, 29.
3 C.J.S. Animals §§ 38, 39, 51.

CHAPTER 24

TEMPERANCE COMMISSION

- Section 82-2401. State temperance commission established.
 82-2402. President of commission.
 82-2403. Secretary—salary.
 82-2404. Purpose.
 82-2405. Duty to prevent liquor sales to minors—declaration of policy.
 82-2406. Cooperation with other officers.
 82-2407. Administration of fund.
 82-2408. Appropriation to be repaid.

82-2401. State temperance commission established. That there shall be established in the state of Montana, a commission to be known as the state temperance commission, the same to be composed of the secretary of the bureau of child and animal protection, the superintendent of public instruction, and the secretary of the state board of health, all of whom shall serve ex officio as members of such commission without additional compensation.

History: En. Sec. 1, Ch. 201, L. 1937. Intoxicating Liquors \S 129.
 48 C.J.S. Intoxicating Liquors \S 212.

82-2402. President of commission. The secretary of the bureau of child and animal protection shall be the president of such commission, and its principal place of business shall be at the capitol building, in the city of Helena, Montana.

History: En. Sec. 2, Ch. 201, L. 1937. NOTE.—The state public welfare department is the successor to the bureau of child and animal protection. See section 71-202.

82-2403. Secretary—salary. The said commission shall be authorized, and is hereby empowered, to appoint and employ a secretary, who shall hold office at the pleasure of the board, and receive a salary of \$1,800.00 a year, to be paid from the fund hereinafter provided.

History: En. Sec. 3, Ch. 201, L. 1937.

82-2404. Purpose. It is hereby declared to be the purpose of the establishment of such commission, to prevent the intemperate use of alcoholic beverages in the state of Montana, and to disseminate information by newspaper advertising, by the distribution of literature, radio speeches, and lectures calculated to bring about temperance in the use of alcoholic liquors by the people of the state of Montana, and particularly intended to educate the minor children of the state with respect to the evils incident to the use of alcoholic stimulants, and the injury occasioned to the body and mind of individuals, and to society, incident to intemperance.

History: En. Sec. 4, Ch. 201, L. 1937. 48 C.J.S. Intoxicating Liquors $\S\S$ 199, 200.
 Intoxicating Liquors \S 119.

82-2405. Duty to prevent liquor sales to minors—declaration of policy. In the administration of this act, it is made the duty of the said commission to make such efforts and endeavor as may appear best calculated to prevent the sale of alcoholic liquors or alcoholic beverages to minors in violation of the law, and to prevent the use thereof by minors; it being hereby declared to be the public policy of this state that the use of alcoholic liquors by minors is injurious to both body and mind and detrimental to society, and

that effective efforts should be made to enforce the law prohibiting the sale, or gift, of alcoholic liquors to minors.

History: En. Sec. 5, Ch. 201, L. 1937.

30 Am. Jur. 424, Intoxicating Liquors,
§§ 322-331.

82-2406. Cooperation with other officers. Upon said temperance commission is conferred the power and it is made its duty to cooperate with and assist the attorney general, all county attorneys, sheriffs and peace officers in the rigid enforcement of all laws prohibiting the sale of liquor to minors and the punishment of offenders. It is vested with power and authority to make independent investigations of such law violations and to prefer charges in any court having jurisdiction against persons accused of violating the law, and it is hereby made the duty of county attorneys to prosecute all such charges by it preferred.

History: En. Sec. 6, Ch. 201, L. 1937.

82-2407. Administration of fund. Such fund shall be kept and carried on the books of the state treasurer of the state of Montana under the designation of "temperance commission fund", and all claims incurred by the commission or through its authority in the administration of this act, shall be paid solely and exclusively from such fund upon claims duly presented and approved by the state board of examiners.

History: En. Sec. 8, Ch. 201, L. 1937.

States~~C~~127.

NOTE.—Sec. 7, Ch. 201, L. 1937 which created the "temperance commission fund" was repealed by Sec. 10, Ch. 14, L. 1941.

59 C.J. States § 378.

82-2408. Appropriation to be repaid. That there shall be and is hereby appropriated from moneys in the state treasury to the credit of the general fund, not otherwise appropriated, the sum of five thousand dollars in order to meet the expenses of the commission in organization and the administration of this act before funds are available in the state treasury to the credit of the "temperance commission fund"; and the said commission is hereby directed and required to pay back to the state treasury for credit of the general fund the amount of such appropriation so soon as funds in the state treasury to the credit of the "temperance commission fund" have accumulated in sufficient amount to permit without crippling the said commission in the administration of this act.

History: En. Sec. 9, Ch. 201, L. 1937.

States~~C~~131.

59 C.J. States § 384.

CHAPTER 24A

TREASURER, STATE

See State Finance, Secs. 79-201 to 79-209

CHAPTER 25

WAR RECORDS AND RELICS, CUSTODIAN OF

Section 82-2501. Custodian of records of Grand Army of Republic and United Spanish War Veterans.

82-2502. Room for storing and safekeeping of records.

- 82-2503. Purposes for which room shall be used.
 82-2504. Records to become property of state.
 82-2505. Expenses, how paid.

82-2501. (320) Custodian of records of Grand Army of Republic and United Spanish War Veterans. The governor of the state of Montana is hereby authorized and directed to appoint a custodian of the records, mementoes, relics, documents, and archives of the Grand Army of the Republic, and the United Spanish War Veterans and history of the residents of the state of Montana who served in the army, navy or marine corps of the United States during the civil war or during the Spanish-American war. The department commander, department of Montana of the Grand Army of the Republic or department commander of the United Spanish War Veterans, department of Montana, may recommend to the governor a suitable person to be appointed as such custodian, provided that the person appointed as such custodian must be a member of the Grand Army of the Republic of the department of Montana or of the United Spanish War Veterans, department of Montana.

History: En. Sec. 1, Ch. 97, L. 1915; States 53.
 re-en. Sec. 320, R. C. M. 1921; amd. Sec. 1, 59 C.J. States §§ 188, 207.
 Ch. 96, L. 1927.

82-2502. (321) Room for storing and safekeeping of records. The governor and secretary of state are hereby authorized and directed to set apart a suitable room in the capitol building of the state of Montana for the storing and safekeeping of such archives, records, etc., of the Grand Army of the Republic and United Spanish War Veterans, and said room shall be suitably furnished, and shall be under the charge of the custodian so appointed.

History: En. Sec. 1, Ch. 32, L. 1913; States 88.
 amd. Sec. 2, Ch. 97, L. 1915; re-en. Sec. 59 C.J. States § 278.
 321, R. C. M. 1921; amd. Sec. 1, Ch. 96, L. 1927.

82-2503. (322) Purposes for which room shall be used. Said room shall be used by such custodian for the purpose of storing and exhibiting relics, mementoes, archives, and documents of the civil war, and United Spanish War Veterans and for arranging and preserving the history of the residents of Montana who served in the army, navy, or marine corps of the United States during the civil war or during the Spanish-American war, and any other literature which the department of Montana of the Grand Army of the Republic or the United Spanish War Veterans, department of Montana, may collect and desire to preserve as a part of the history of the state. Such records and exhibits shall be accessible at all times, under suitable rules and regulations, to all residents of this state, and other persons desirous of viewing such exhibits.

History: En. Sec. 2, Ch. 32, L. 1913; 322, R. C. M. 1921; amd. Sec. 1, Ch. 96, L. amd. Sec. 3, Ch. 97, L. 1915; re-en. Sec. 1927.

82-2504. (323) Records to become property of state. All books, records, papers, relics, mementoes, and histories, and other effects of whatever nature applying to the department of the Grand Army of the Republic, or United Spanish War Veterans, and accorded space in this room, shall, whenever

such department ceases to exist as a department of the Grand Army of the Republic, or United Spanish War Veterans, become the property of the state of Montana.

History: En. Sec. 3, Ch. 32, L. 1913; 323, R. C. M. 1921; amd. Sec. 1, Ch. 96, re-en. Sec. 4, Ch. 97, L. 1915; re-en. Sec. L. 1927.

82-2505. (324) Expenses, how paid. The expense of collecting and maintaining such exhibits, including the salary of the custodian herein provided, shall not exceed the sum of twelve hundred dollars (\$1200.00), in any one year, which shall be paid by the state treasurer in the same manner as other expenses and salaries of the state departments and employees or officers are paid.

History: En. Sec. 5, Ch. 32, L. 1913; 324, R. C. M. 1921; amd. Sec. 1, Ch. 96, re-en. Sec. 5, Ch. 97, L. 1915; re-en. Sec. L. 1927.

TITLE 83

STATE SOVEREIGNTY AND JURISDICTION

- Chapter 1. Sovereignty and territorial jurisdiction of the state, 83-101 to 83-112.
2. Rights of the state over persons, 83-201.
 3. Persons composing the people of the state—residence, rules for determining, 83-301 to 83-303.
 4. Political rights and duties of persons subject to the jurisdiction of the state, 83-401 to 83-407.
 5. Acceptance of amendment to sec. 11 enabling act, 83-501.

CHAPTER 1

SOVEREIGNTY AND TERRITORIAL JURISDICTION OF THE STATE

- Section 83-101. Sovereignty and style of process.
- 83-102. Territorial jurisdiction, limitations on.
- 83-103. Military reservations.
- 83-104. Glacier national park.
- 83-105. Conveyance to United States of certain minerals in Glacier Park.
- 83-106. Yellowstone national park.
- 83-107. State grant of consent to United States to purchase additional lands for park purposes.
- 83-108. Jurisdiction over lands purchased by United States.
- 83-109. Concurrent jurisdiction over Fort Peck dam ceded to United States—reservation of rights to state.
- 83-110. Consent to purchase of lands by United States for national forest purposes—jurisdiction.
- 83-111. Concurrent police jurisdiction on Blackfeet highway ceded to United States.
- 83-112. Time when jurisdiction vests in the United States.

83-101. (19) Sovereignty and style of process. The sovereignty of the state resides in the people thereof, but the style of all process must be "The State of Montana," and all prosecutions must be conducted in the name of the state.

History: En. Sec. 30, Pol. C. 1895; Process \S 28; States \S 1.
re-en. Sec. 20, Rev. C. 1907; re-en. Sec. 19, 50 C.J. Process \S 30; 59 C.J. States
R. C. M. 1921. Cal. Pol. C. Sec. 30. $\S\S$ 1, 2.

83-102. (20) Territorial jurisdiction, limitations on. The sovereignty and jurisdiction of this state extend to all places within its boundaries, as established by the constitution, excepting such places as are under the exclusive jurisdiction of the United States; but the extent of such jurisdiction over places that have been or may be ceded to, purchased, or condemned by the United States, is qualified by the terms of such cession, or the laws under which such purchase or condemnation has been or may be made.

History: En. Sec. 40, Pol. C. 1895; re-en. Sec. 21, Rev. C. 1907; re-en. Sec. 20, R. C. M. 1921. Cal. Pol. C. Sec. 33.

Operation and Effect

Under this section the state consents to the purchase, condemnation, or acquisition of lands by the United States. Where,

however, the United States still retains its original ownership of the land, neither purchase, condemnation, nor acquisition is necessary, but actual occupation for any purpose indicated in these sections stands in lieu thereof. Mere occupancy of government land by the military for any purpose not indicated in the law or the con-

stitution would not of itself be sufficient to divest the state of the sovereignty granted to it by congress, nor does the right reserved to serve state process on these reservations infringe on the exclusive jurisdiction of the United States. *State v. Tully*, 31 M 365, 376, 78 P 760.

References

State ex rel. Board of Equalization v. Glacier Park Co., — M —, 164 P 2d 366, 368.

States 31; United States 3.

59 C.J. States §§ 1, 2; 65 C.J. United States § 7.

83-103. (21) Military reservations. Authority is granted to and acknowledged in the United States to exercise exclusive legislation, as provided by the constitution of the United States, over the military reservations of Fort Assinaboine, Fort Custer, Fort Keogh, Fort Maginnis, Fort Missoula, and Fort Shaw, as now established by law, so long as said places remain military reservations, to the same extent and with the same effect as if said reservations had been purchased by the United States by consent of the legislative assembly of the state of Montana.

All legal process of the state, both civil and criminal, may be served upon persons and property found within any of said reservations, or on any Indian reservation, in all cases where the United States has not exclusive jurisdiction.

History: En. Sec. 41, Pol. C. 1895; re-en. Sec. 22, Rev. C. 1907; re-en. Sec. 21, R. C. M. 1921.

Operation and Effect

The constitution of Montana and this section acknowledge absolute sovereignty in the United States over the places named or referred to therein. *State v. Tully*, 31 M 365, 375, 78 P 760.

References

State ex rel. Board of Equalization v. Glacier Park Co., — M —, 164 P 2d 366, 368.

Criminal Law 97(4); Indians 32; United States 3.

22 C.J.S. Criminal Law § 139; 42 C.J.S. Indians §§ 11, 68, 70-72; 65 C.J. United States § 7.

54 Am. Jur. 594, United States, §§ 81 et seq.

State or municipal regulations as applicable to work on military reservations. 115 ALR 371.

Domicile or residence of person in the armed forces. 148 ALR 1413.

83-104. (22) Glacier national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over and within all the territory which is now or may hereafter be included in that tract of land in the state of Montana set aside by the act of congress, approved May 11, 1910, for the purposes of a national park, and known and designated as "The Glacier National Park," saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid park in any suits or prosecution for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside of said park; and saving, further, to the said state the right to tax persons and corporations, their franchises, and property, on the lands included in said park: provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of this state that they assume police or military jurisdiction over said park.

History: En. Sec. 1, Ch. 33, L. 1911; re-en. Sec. 22, R. C. M. 1921.

NOTE.—The boundaries of Glacier national park, as defined in the act above referred to, are as follows: Commencing at a point on the international boundary,

between the United States and the Dominion of Canada, at the middle of the Flathead river; thence following southerly along and with the middle of the Flathead river to its confluence with the middle fork of the Flathead river; thence follow-

ing the north bank of said middle fork of the Flathead river to where it is crossed by the north boundary of the right of way of the Great Northern railroad; thence following the said right of way to where it intersects the west boundary of the Blackfeet Indian reservation; thence northerly along said west boundary to its intersection with the international boundary; thence along said international boundary to the place of beginning.

Workmen's Compensation

Compensation act held applicable to injuries sustained in construction work on road extending from point in the state to a point in Glacier national park. *Loney v. Industrial Accident Board*, 87 M 191, 194, 286 P 408.

Operation and Effect

There are no words in this section which can be interpreted as excluding the Glacier National Park lands from the state or terminating the state's sovereignty or jurisdiction over them, and any such intent is negated by the reservation of certain powers. *State ex rel. Board of Equalization v. Glacier Park Co.*, ___ M ___, 164 P 2d 366, 368.

References

State ex rel. Board of County Commissioners of Valley County v. Bruce et al., 106 M 322, 331, 77 P 2d 403.

Criminal Law ¶97(4); *Taxation* ¶20; *United States* ¶3.

22 C.J.S. *Criminal Law* §139; 61 C.J. *Taxation* §17; 65 C.J. *United States* §7.

83-105. Conveyance to United States of certain minerals in Glacier Park.

For the purpose of cooperating with the United States of America in Glacier National Park in the state of Montana, the governor, secretary of state and commissioner of state lands and investments are hereby authorized and directed, under the formalities specified in section 81-932, relating to execution of patents to state lands, to release, relinquish and convey to the United States of America, without cost, all of the right, title and interest of the state of Montana in and to the minerals now known or hereafter found to exist in the following described property lying within the exterior boundaries of Glacier National Park, state of Montana, to-wit: the Northeast Quarter (NE $\frac{1}{4}$) of section thirty-six (36), township thirty-four (34) north, range twenty (20) west, Montana principal meridian.

History: En. Sec. 1, Ch. 1, L. 1939.

83-106. (23) Yellowstone national park. Exclusive jurisdiction shall be and the same is hereby ceded to the United States over all that part of territory situate in the state of Montana now embraced in the Yellowstone National Park, described as follows:

Beginning at the intersection of the east boundary of Yellowstone Park with the south boundary of Montana; thence north to the northeast corner of said park; thence west along the north boundary of the park to the northwest corner thereof; thence south along the west boundary of the park to the boundary between Montana and Idaho; thence easterly along that boundary to the west boundary of Wyoming; thence north along the west boundary of Wyoming to the northwest corner thereof; thence east along the boundary between Wyoming and Montana to the east boundary of said park, the place of beginning; containing an area of approximately one hundred ninety-eight (198) square miles, saving, however, to the said state the right to serve civil or criminal process within the limits of the aforesaid described lands, as long as the lands herein described are used for a national park, and no other purposes, in suits or prosecutions for or on account of rights acquired, obligations incurred, or crimes committed in said state, but outside the lands aforesaid.

History: En. Sec. 1, Ch. 112, L. 1917; re-en. Sec. 23, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1939.

Right of County to Tax

This section, purporting to cede to the United States exclusive jurisdiction over Montana land included in Yellowstone park by act March 1, 1872, Nos. 1, 2 (16 USCA Nos. 21, 22), but reserving right of taxation and conditioned on due notice of acceptance by United States, which was never given, did not deprive Gallatin county, of which such strip was made part by act Mont. Terr. Jan. 12, 1872 (laws, memorials and resolutions 1871-72, p. 431, No. 8), of right to levy taxes therein. Yel-

lowstone Park Transp. Co. v. Gallatin County et al., 27 F 2d 410.

References

State ex rel. Board of County Commissioners of Valley County v. Bruce et al., 106 M 322, 331, 77 P 2d 403 (overruled by Valley County v. Thomas et al., 109 M 345, 382, 97 P 2d 345); State ex rel. Board of Equalization v. Glacier Park Co., — M —, 164 P 2d 366, 368.

Criminal LawⒸ97(4); TaxationⒸ20; United StatesⒸ3.

22 C.J.S. Criminal Law § 139; 61 C.J. Taxation § 17; 65 C.J. United States § 7.

83-107. State grant of consent to United States to purchase additional lands for park purposes. The consent of the state of Montana to the purchase by the United States of lands within the state of Montana to be embraced in Yellowstone National Park, other than the lands described in section 83-106, and the consent of the state of Montana to the exercise of legislative jurisdiction by the United States over any additional lands to be embraced in said national park, as such consents may be contained in the act of the second legislative assembly of the state of Montana approved February 14, 1891, entitled, "An act ceding to the United States jurisdiction over certain lands", or any amendment of said act, is hereby withdrawn, and exclusive legislative jurisdiction over all lands within the state of Montana that may be added hereafter to said national park shall be retained in the state of Montana.

History: En. Sec. 2, Ch. 142, L. 1939.

United StatesⒸ3.

65 C.J. United States § 7.

83-108. (25) Jurisdiction over lands purchased by United States. Pursuant to article 1, section 8, paragraph 17 of the constitution of the United States, consent to purchase is hereby given, and exclusive jurisdiction ceded, to the United States over and with respect to any lands within the limits of this state, which shall be acquired by the complete purchase by the United States, for any of the purposes described in said paragraph of the constitution of the United States, said jurisdiction to continue as long as said lands are held and occupied by the United States for said purposes; reserving, however, to this state the right to serve and execute civil or criminal process lawfully issued by the courts of the state, within the limits of the territory over which jurisdiction is ceded in any suits or transactions for or on account of any rights obtained, obligations incurred, or crimes committed in this state, within or without such territory; and reserving further to the said state the right to tax persons and corporations, their franchises and property within said territory; and reserving further to the state and its inhabitants and citizens the right to fish and hunt, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state of Montana jurisdiction in the enforcement of state laws relating to the duties of the livestock sanitary board and the state board of health, and the enforcement of any regulations

promulgated by said boards in accordance with the laws of the state of Montana; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, shall file an accurate map or plat and description by metes and bounds of said lands in the office of the county clerk and recorder of the county in which said lands are situated, and if such lands shall be within the corporate limits of any city, such map or plat shall also be filed in the office of the city clerk of said city, and the filing of such map as herein provided, shall constitute acceptance of the jurisdiction by the United States as herein ceded. The offer by the state of Montana to cede to the federal government legislative jurisdiction over areas within the state of Montana as contained in the act of the second legislative assembly of the state of Montana, 1891, entitled: "An act giving the consent of the state of Montana to the purchase, by the United States, of land in any city or town of the state, for the purpose of United States court house, post office and for other purposes" approved March 5, 1891, as amended by the act of the third legislative assembly of 1893, an act entitled: "An act giving the consent of the state of Montana to the purchase by the United States of land in any city or town of the state for the purpose of United States court house, post-offices and for other like purposes", approved March 9, 1893, is hereby withdrawn except as to areas heretofore completely purchased or acquired by the federal government and over which areas the federal government has heretofore assumed either exclusive legislative jurisdiction or concurrent legislative jurisdiction under the terms of one or the other of said acts.

History: En. Sec. 1, p. 52, L. 1893; re-en. Sec. 43, Pol. C. 1895; re-en. Sec. 24, Rev. C. 1907; re-en. Sec. 25, R. C. M. 1921; amd. Sec. 1, Ch. 155, L. 1939.

NOTE.—This section was considered and held applicable to land owned by the federal government within the Fort Peck Reservation in State ex rel. Board of County Commissioners of Valley County v. Bruce, 104 M 500, 69 P 2d 97, and State ex rel. Board of County Commissioners of Valley County v. Bruce, 106 M 322, 77 P 2d 403, both of which decisions were overruled by Valley County v. Thomas et al., 109 M 345, 382, 97 P 2d 345.

Ceding Statutes to Be Strictly Construed

Held, that the filing of the map and description of the land taken is a condition precedent to transfer of jurisdiction to the United States. The mere fact that secs. 24, R. C. M. 1935 (since repealed) and 83-108 consent to the purchase of state land for governmental purposes, does not imply that the state ipso facto is divested of sovereignty, and exclusive control over the area is assumed by the federal government; jurisdiction does not pass until notice of assumption is given and other conditions required by the ceding statutes have been performed. Valley County v. Thomas, 109 M 345, 368, 379, 97 P 2d 345.

General Ceding Statutes Not Applicable to Project

Held, that the general cession statutes, this and the preceding sections, have no application to the Fort Peck dam project, the purposes of which are flood control and improvement of navigation, and therefore does not fall within the provision of the federal constitution relative to cession of jurisdiction over lands purchased by it "for the erection of forts, arsenals, etc., and other needful buildings," the earth-fill dam in course of construction not being a "building," though buildings are incidentally necessary for the work. Valley County v. Thomas, 109 M 345, 365, 97 P 2d 345.

Operation and Effect

By this section the state gives its consent to the purchase, and exclusive jurisdiction is ceded to the United States over and with respect to any lands within the limits of the state which shall be acquired by the United States for the purposes described in the federal constitution. State v. Tully, 31 M 365, 375, 78 P 760.

Constitutionality

The failure of this section to reserve to the state, the right to tax the personal property of persons and private corporations located upon lands acquired by the

federal government as provided therein, does not render the statute unconstitutional as violative of sections 1, 2 and 11 of article XII, providing for the levy of uniform taxes upon all property within the state except such as is exempted. State ex rel. Board of County Commissioners of Valley County v. Bruce et al., 106 M 322, 326 et seq., 77 P 2d 403.

References

State ex rel. Board of Equalization v. Glacier Park Co., — M —, 164 P 2d 366, 368.

Criminal Law—97(4); Taxation—20; United States—3.

22 C.J.S. Criminal Law § 139; 61 C.J. Taxation § 17; 65 C.J. United States § 7. 54 Am. Jur. 594, United States, §§ 81-88.

83-109. (25.1) Concurrent jurisdiction over Fort Peck dam ceded to United States—reservation of rights to state. That consent to purchase or condemn all necessary lands is hereby given and concurrent jurisdiction shall be, and the same is hereby, ceded to the United States over the Fort Peck dam, the body of water or artificial lake created by such dam, the land under such body of water, and any lands now owned or which may be hereafter acquired by the United States and which shall touch such body of water, all such being situated in the counties of Valley, Phillips, McCone, Garfield, Petroleum and Fergus, State of Montana, saving, however, to the said state the right to serve civil or criminal process within the limits of the territory over which jurisdiction is so ceded in any suits or prosecutions for or on account of rights obtained, obligations incurred, or crimes committed in said state, within or without said territory, and saving further to the said state the right to tax persons and corporations, their franchises and property within said territory, and reserving further to the said state and its inhabitants, citizens, and nonresidents the right to fish or hunt by boat or otherwise, and the right of access, ingress and egress to and through said ceded territory to all persons owning or controlling livestock for the purpose of watering the same, and saving further to the state jurisdiction in the enforcement of the state laws relating to the duties of the live stock sanitary board, and the state board of health, and the enforcement of regulations promulgated by said boards in accordance with the laws of said state; provided, however, that jurisdiction shall not vest until the United States, through the proper officers, notifies the governor of the state of Montana that they assume police or military jurisdiction over said territory.

History: En. Sec. 1, Ch. 50, Ex. L. 1933.

NOTE.—This section was considered and held inapplicable to certain land acquired within the Fort Peck Reservation in State ex rel. Board of County Commissioners of Valley County v. Bruce et al., 104 M 500, 69 P 2d 97, and State ex rel. Board of County Commissioners of Valley County v. Bruce et al., 106 M 322, 77 P 2d 403, both of which decisions were overruled by Valley County v. Thomas et al., 109 M 345, 382, 97 P 2d 345.

County Entitled to License Automobiles Owned by Residents of Fort Peck Town-site

In an action by Valley county to enjoin McCone county and the treasurer thereof from issuing automobile licenses upon cars owned and taxable within Valley county, and to cancel such licenses already issued,

or to recover from McCone county the sums Valley county would have received if the licenses had been issued by it, held, that if the motor vehicle's owner resides on Fort Peck townsite, its situs for license and tax purposes is ordinarily in the county of its owner's actual residence or domicile, under sec. 53-114; its owner's voting residence or place of habitual or permanent keeping being immaterial. Valley County v. Thomas, 109 M 345, 387, 97 P 2d 345.

Statute Applicable to Fort Peck Dam Reservation

Held, that secs. 24, R. C. M. 1935 (since repealed) and 83-108, are inapplicable to the Fort Peck dam reservation; that this section, specially providing for cession for that project is the controlling act; that the powers reserved to the state

by this section, including the taxing power, continue to reside in the state and in the respective counties in which the ceded lands are situated. (Overruling *State ex rel. Valley County v. Bruce*, 104 M 500, 69 P 2d 97, 106 M 322, 77 P 2d 403.) *Valley County v. Thomas*, 109 M 345, 381, 97 P 2d 345.

References

State ex rel. Board of Equalization v. Glacier Park Co., — M —, 164 P 2d 366, 368.

Criminal Law ⚡97(4); Taxation ⚡20; United States ⚡3.

22 C.J.S. Criminal Law § 139; 61 C.J. Taxation § 17; 65 C.J. United States § 7.

83-110. (25.2) Consent to purchase of lands by United States for national forest purposes—jurisdiction. For the purpose of more effectively cooperating with the United States in the consolidating and rounding out of national forests in accordance with land use plans and to facilitate the placing of forest lands other than national forest but which are integral with national forest lands under stable protection and administration to the end of public benefit and to help land owners, including the counties of the state in their discretion, to dispose of such of their lands as may be needed for national forest purposes, consent of the state of Montana is hereby given to the purchase by the United States of such lands in the state of Montana as in the opinion of the secretary of agriculture are needed for the purposes contemplated in section 6 of the act of congress approved March 1, 1911, commonly known as, and called, the Weeks law, and/or section 6 of the act of congress approved June 7, 1924, commonly known as the Clarke-McNary law, and/or any other provisions of any act of congress authorizing the purchase of land for national forest purposes, provided that the jurisdiction of the state of Montana, both civil and criminal, over persons upon areas acquired under this act shall not be affected or changed by reason of their acquisition and administration by the United States, except so far as the punishment of offenses against the United States is concerned, and provided further that the state shall have the same jurisdiction in respect to such lands as it has in respect to other national forest lands within the state, and further provided that all property rights, easements, and benefits retained by, or reserved to, owners of lands purchased by the United States shall be subject to the tax laws of the state.

History: En. Sec. 1, Ch. 118, L. 1935.

References

State ex rel. Board of Equalization v. Glacier Park Co., — M —, 164 P 2d 366, 368.

Criminal Law ⚡97(4); Woods and Forests ⚡8.

22 C.J.S. Criminal Law § 139; 71 C.J. Woods and Forests § 14 et seq.

54 Am. Jur. 594, United States, §§ 81-88.

83-111. (26.1) Concurrent police jurisdiction on Blackfeet highway ceded to United States. That concurrent police jurisdiction shall be, and the same is hereby granted to the United States of America, over and within all the territory which is now or may hereafter be included in the rights of way of the Blackfeet highway, including the highway itself throughout its length between Glacier Park Station and the Canadian boundary line, and including also the rights of way of the highways on the Blackfeet Indian Reservation connecting the Blackfeet highway with the Glacier Park road system, including the highways themselves.

History: En. Sec. 1, Ch. 37, L. 1929.

References

State ex rel. Board of Equalization v.

Glacier Park Co., — M. —, 164 P 2d 366,
368.

Highways 165.
40 C.J.S. Highways § 232; 42 C.J. Motor
Vehicles § 571.

83-112. (26.2) Time when jurisdiction vests in the United States. That jurisdiction herein granted shall not vest until the United States of America through the proper officers, notifies the governor of the state of Montana that they assume concurrent police jurisdiction over the said rights of way and the said highways.

History: En. Sec. 2, Ch. 37, L. 1929.

40 C.J.S. Highways § 232; 42 C.J. Motor
Vehicles § 571.

Highways 165.

CHAPTER 2

RIGHTS OF THE STATE OVER PERSONS

Section 83-201. Rights over persons enumerated.

83-201. (26) Rights over persons enumerated. The state has the following rights over persons within its limits, to be exercised in the cases and in the manner provided by law:

1. To punish for crime.
2. To imprison or confine for the protection of the public peace or health, or of individual life or safety.
3. To imprison or confine for the purpose of enforcing civil remedies.
4. To establish custody and restraint for the persons of idiots, lunatics, drunkards, and other persons of unsound mind.
5. To establish custody and restraint of paupers for the purpose of their maintenance.
6. To establish custody and restraint of minors unprovided for by natural guardians, for the purposes of their education, reformation, and maintenance.
7. To require services of persons, with or without compensation, in military duty; in jury duty; as witnesses; as town, village, or city officers; in highway labor; in maintaining the public peace; in enforcing the service of process; in protecting life and property from fire, pestilence, wreck, and flood; and in such other cases as are provided by statute.

History: En. Sec. 50, Pol. C. 1895; States 21.
re-en. Sec. 25, Rev. C. 1907; re-en. Sec. 59 C.J. States § 40.
26, R. C. M. 1921. Cal. Pol. C. Sec. 37.

CHAPTER 3

PERSONS COMPOSING THE PEOPLE OF THE STATE— RESIDENCE, RULES FOR DETERMINING

Section 83-301. Who are the people.
83-302. Who are citizens.
83-303. Residence, rules for determining.

83-301. (31) Who are the people. The people, as a political body, consist:

1. Of electors.
2. Of citizens not electors.

History: En. Sec. 70, Pol. C. 1895; States¹.
 re-en. Sec. 30, Rev. C. 1907; re-en. Sec. 31, 59 C.J. States §§ 1, 2.
 R. C. M. 1921. Cal. Pol. C. Sec. 50.

83-302. (32) Who are citizens. The citizens of the state are:

1. All persons born in this state and residing within it, except the children of transient aliens.
2. All persons born out of this state who are citizens of the United States and residing within this state.

History: En. Sec. 71, Pol. C. 1895; re-en. Sec. 31, Rev. C. 1907; re-en. Sec. 32, R. C. M. 1921. Cal. Pol. C. Sec. 51.

Operation and Effect

Where it appeared that the architects for the state capitol building were citizens of the United States, and, before the contract for furnishing plans, specifications, and detail drawings for said building was

made, left their former residence without intending to return, and with the intention of residing in this state, they were citizens of the same under this section. *Donovan v. State Capitol Commission*, 21 M 344, 345, 53 P 1133.

Citizens² et seq.

14 C.J.S. Citizens §§ 1, 2 et seq.

83-303. (33) Residence, rules for determining. Every person has, in law, a residence. In determining the place of residence the following rules are to be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.
2. There can only be one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the father during his life, and after his death the residence of the mother, while she remains unmarried, is the residence of the unmarried minor children.
5. The residence of the husband is presumptively the residence of the wife.
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

History: En. Sec. 72, Pol. C. 1895; re-en. Sec. 32, Rev. C. 1907; re-en. Sec. 33, R. C. M. 1921. Cal. Pol. C. Sec. 52.

Minor of School Age

Held, that since the residence of a minor of school age committed to the state vocational school is where the father or mother reside; that inmates thereof sent thereto from the various counties of the state are not resident in the school district in which that institution is located, within the meaning of section 75-1903, and that therefore mandamus does not lie to compel its superintendent to furnish a list of them to the clerk of that district for school census purposes. *State ex rel. Johnson v. Kassing*, 74 M 25, 29, 238 P 582.

"Residence" Synonymous with "Domicile"

Where statutes refer only to residence and not to domicile, as does this section, the courts have generally held that the word "residence" will be construed to mean practically the same as "domicile." *State ex rel. Duckworth v. District Court*, 107 M 97, 101, 80 P 2d 367.

References

Archer v. Archer, 106 M 116, 119, 75 P 2d 783; *Wilson v. Hoisington*, 110 M 20, 24, 98 P 2d 369; *In re Takahashi's Estate*, 113 M 490, 497, 129 P 2d 217.

Domicile¹ et seq.

27 C.J.S. Domicile §§ 1, 3, 4.

17 Am. Jur. 585 et seq., Domicile.

CHAPTER 4

POLITICAL RIGHTS AND DUTIES OF PERSONS SUBJECT TO THE
JURISDICTION OF THE STATE

Section	83-401.	Right of protection.
	83-402.	Allegiance.
	83-403.	Allegiance, how renounced.
	83-404.	Persons not citizens.
	83-405.	Eligibility to office.
	83-406.	Rights and duties of citizens not electors.
	83-407.	Rights and duties of citizens of other states.

83-401. (34) Right of protection. Every person while within the jurisdiction of this state is entitled to its protection.

History: En. Sec. 80, Pol. C. 1895; re-en. Sec. 33, Rev. C. 1907; re-en. Sec. 34, R. C. M. 1921. Cal. Pol. C. Sec. 54. Civil Rights¹.
14 C.J.S. Civil Rights § 1.
Prohibition as means of controlling action of Secretary of State. 115 ALR 14.

83-402. (35) Allegiance. Allegiance is the obligation of fidelity and obedience which every citizen owes to the state.

History: En. Sec. 81, Pol. C. 1895; re-en. Sec. 34, Rev. C. 1907; re-en. Sec. 35, R. C. M. 1921. Cal. Pol. C. Sec. 55. Citizens².
14 C.J.S. Citizens §§ 1, 3.

83-403. (36) Allegiance, how renounced. Allegiance may be renounced by a change of residence.

History: En. Sec. 82, Pol. C. 1895; re-en. Sec. 35, Rev. C. 1907; re-en. Sec. 36, R. C. M. 1921. Cal. Pol. C. Sec. 56. Citizens².
14 C.J.S. Citizens §§ 1, 3.

83-404. (37) Persons not citizens. Persons in this state not its citizens are either:

1. Citizens of other states; or,
2. Aliens.

History: En. Sec. 83, Pol. C. 1895; re-en. Sec. 36, Rev. C. 1907; re-en. Sec. 37, R. C. M. 1921. Cal. Pol. C. Sec. 57. Aliens¹; Citizens².
3 C.J.S. Aliens §§ 1, 2; 14 C.J.S. Citizens §§ 1, 3.

83-405. (38) Eligibility to office. Every elector is eligible to the office for which he is an elector, except where otherwise specially provided.

History: En. Sec. 84, Pol. C. 1895; re-en. Sec. 37, Rev. C. 1907; re-en. Sec. 38, R. C. M. 1921. Cal. Pol. C. Sec. 58. Officers¹⁸.
46 C.J. Officers § 32.

83-406. (39) Rights and duties of citizens not electors. An elector has no rights or duties beyond those of a citizen not an elector, except the right and duty of holding and electing to office.

History: En. Sec. 85, Pol. C. 1895; re-en. Sec. 38, Rev. C. 1907; re-en. Sec. 39, R. C. M. 1921. Cal. Pol. C. Sec. 59. Elections⁵⁹.
29 C.J.S. Elections § 16.

83-407. (40) Rights and duties of citizens of other states. A citizen of the United States, who is not a citizen of this state, has the same rights and duties as a citizen of this state not an elector.

History: En. Sec. 86, Pol. C. 1895; re-en. Sec. 39, Rev. C. 1907; re-en. Sec. 40, R. C. M. 1921. Cal. Pol. C. Sec. 60. **References** State ex rel. Wulf v. McGrath, 111 M. 96, 100, 106 P 2d 183.

Citizens 11.
14 C.J.S. Citizens § 2.

CHAPTER 5

ACCEPTANCE OF AMENDMENT TO SEC. 11 ENABLING ACT

Section 83-501. Acceptance of congressional amendment to sec. 11 of the enabling act.

83-501. Acceptance of congressional amendment to sec. 11 of the enabling act. The state of Montana hereby accepts the amendment to section eleven of the act approved February 22, 1889, (25 Stat. 676), relating to the admission into the Union of the States of North Dakota, South Dakota, Montana and Washington, approved by the President of the United States June 25, 1938, which amendment reads as follows:

"BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That so much of the second paragraph of section 11 of the act relating to the admission into the Union of the States of North Dakota, South Dakota, Montana, and Washington, approved February 22, 1889, as amended, as reads 'but leases for grazing and agricultural purposes shall not be for a term longer than five years', is amended to read as follows; 'but leases for grazing and agricultural purposes shall not be for a term longer than ten years'." Approved June 25, 1938.

History: En. Sec. 1, Ch. 8, L. 1939.

TITLE 84

TAXATION

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5. Assessment book—form—contents—disposal, 84-501 to 84-515.
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CHAPTER 1

DEFINITION OF TERMS

Section 84-101. Definition of terms.

84-101. (1996) Definition of terms. Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First—The term “property” includes moneys, credits, bonds, stocks, franchises, and all other matters and things real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Second—The term “real estate” includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, subject to the provisions of section 84-5401, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all right and privileges appertaining thereto.

3. Improvements.

Third—The term “improvements” includes all buildings, structures, fixtures, fences, and improvements erected upon or affixed to the land, whether title has been acquired to said land or not.

Fourth—The term “personal property” includes everything which is the subject of ownership, not included within the meaning of the term “real estate” and “improvements”.

Fifth—The terms “value” and “full cash value” mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term “credit” means those solvent debts, secured or unsecured, owing to a person.

History: En. Sec. 4, p. 74, L. 1891; re-en. Sec. 3680, Pol. C. 1895; re-en. Sec. 2501, Rev. C. 1907; re-en. Sec. 1996, R. C. M. 1921; amd. Sec. 1, Ch. 99, L. 1939; Cal. Pol. C. Sec. 3617.

Credits

Moneys due a bank from other banks are credits within the definition of the

term given in this section. *Clark v. Maher*, 34 M 391, 400, 87 P 272.

An option to purchase real and personal property created no indebtedness which could be enforced, and, therefore, the amount due and unpaid under the contract was not a “credit,” within the meaning of this section, namely, a solvent debt, which could properly be taxed. *Read v.*

Lewis and Clark County, 55 M 412, 418, 178 P 177.

Improvements

The term improvement as used in the mechanics lien statute means an addition to the property, rather than repairs made on a building. *Interstate Lumber Co. v. Rider et al.*, 93 M 489, 494, 19 P 2d 644.

Operation and Effect

This section determines the classification of property for purposes of taxation, and courts are limited by that classification in determining how property should be assessed. *Helena Water Works Co. v. Settles*, 37 M 237, 239, 95 P 838.

Personal Property

Personal property owned by a national bank is not subject to taxation under state laws. *First Nat. Bank v. Province*, 20 M 374, 376, 377, 51 P 821.

Stocks of a state bank or trust company fall within the definition of the term "property" as given in subdivisions 1 and 4 of this section. *Daly Bank etc. Co. v. Board of Commrs.*, 33 M 101, 106, 81 P 950.

For purposes of taxation a water right is personal property. *Helena Water Works Co. v. Settles*, 37 M 237, 239, 95 P 838.

Annual crops growing upon land are not part of the land under the statutes of this state, but where the owner of the land sells it with the right of immediate possession in the purchaser and without reserving the crop thereon and the purchaser takes possession before severance, title passes to the crop as well, and this principle is applicable where the land is sold at decretal or execution sale. *Kester v. Amon et al.*, 81 M 1, 9, 261 P 288.

Id. Where an occupant of land, be he a purchaser, tenant or mere trespasser holding it adversely to the owner, plants and cultivates crops, they are his personal property provided he remains in possession until after they are harvested.

Property Not Included in the Preceding Six Classes

Individually owned shares of state bank stock are not "credits" as defined by subd. 6, and therefore may not properly be placed in class 5 of the classification act, (sections 84-301, 84-302) nor do they properly belong in class 6, which embraced only shares of national bank stock and moneyed capital owned by a bank and employed in its business, but in the absence of more specific provisions should go into class 7, as property not included in the preceding six classes. *State v. Mady*, 83 M 418, 272 P 691.

Real Estate

For the purposes of taxation, the word "property" includes "real estate," and within the definition of "real estate" is the possession of, claim to, ownership of, or right to the possession of land. State lands after sale, but before the price is fully paid, are subject to taxation as the property of the purchaser. *Courtney v. Missoula County*, 21 M 591, 593, 594, 55 P 359.

If unpatented mining claims are not taxable, it is not because they are not property within the definition of this section, but because they have been exempted from the general provisions of the revenue laws. *Cobban v. Meagher*, 42 M 399, 409, 113 P 290.

The provision of the above section, that "the term 'real estate' includes the possession of, claim to, ownership of, or right to the possession of land," declares a rule independent of statute. *Northern Pac. Ry. Co. v. Mjelde*, 48 M 287, 294, 137 P 386.

Id. Coal deposits underlying land form a part of the real estate within the definition of that term given in the above section, and the reservation of those deposits in a deed, with the right to mine, constitutes an interest in real estate.

The right reserved in a deed of a railroad company to such use of the surface of the land as may be found necessary for the exploration, mining and carrying away of the coal that may be found below, is a valuable interest in the land itself, and as such properly subject to taxation under this section and section 84-201. The taxable value of the right to the use of the surface of the land for such purposes, omitting the deposit from the estimate, is to be ascertained as if the entire estate or land was vested in the grantee, the assessor to make an equitable apportionment of this value between the grantee and the railway company. *Northern Pac. Ry. Co. v. Musselshell Co.*, 54 M 96, 108, 169 P 53.

So long as petroleum and gas remain in the ground they are part of the realty and as such subject to the owner's control. *Williard et al. v. Federal Surety Co.*, 91 M 465, 471, 8 P 2d 633.

Value and Full Cash Value

All taxable property must be assessed at its full cash value, the terms "value" and "full cash value" being defined as "the amount at which property would be taken in payment of a just debt due from a solvent creditor." *Wells Fargo & Co. v. Harrington*, 54 M 235, 242, 169 P 463.

References

Cited or applied as section 2501, revised codes, in *Anaconda C. Min. Co. v. Ravalli*

County, 52 M 422, 425, 158 P 682; *Cruse v. Fischl*, 55 M 258, 265, 175 P 878; *State ex rel. Rankin v. Harrington*, 68 M 1, 17, 27, 217 P 681; *State ex rel. Northern P. Ry. Co. v. Duncan*, 68 M 420, 425, 219 P 638; *State v. Rarey*, 72 M 270, 279, 233 P 615; *Montana Nat. Bank v. Yellowstone*, 78 M 62, 252 P 876; *Butte Electric Ry. Co. v. Brett*, 80 M 12, 17, 257 P 478; *State ex rel. Schoonover*, 89 M 257, 270, 297 P 476; *Rosebud County v. Smith et al.*, 92 M 80, 9 P 2d 1071; *State ex rel.*

Tillman v. District Court, 101 M 176, 182, 53 P 2d 107; *Coreoran v. State Board of Equalization*, 116 M 499, 502, 154 P 2d 795; *Klies v. Linnane*, 117 M 59, 64, 156 P 2d 183; *Rist v. Toole County*, 117 M 426, 439, 441, 159 P 2d 340.

Licenses—31 et seq.; Taxation—31 et seq.

37 C.J. Licenses § 118 et seq.; 61 C.J. Taxation §§ 13, 14 et seq.

51 Am. Jur. 34, Taxation, §§ 2-8.

CHAPTER 2

PROPERTY SUBJECT TO TAXATION—BASIS FOR TAXATION

Section 84-201. Property subject to taxation.

84-202. Exemptions from taxation.

84-203. Tax exemption of certain state lands used for water conservation projects.

84-201. (1997) Property subject to taxation. All property in this state is subject to taxation, except as provided in the next section.

History: Ap. p. Sec. 1667, *Comp. Stat.* 1887; en. Sec. 1, p. 73, L. 1891; re-en. Sec. 3670, *Pol. C.* 1895; re-en. Sec. 2498, *Rev. C.* 1907; re-en. Sec. 1997, *R. C. M.* 1921, *Cal. Pol. C. Sec.* 3607.

Operation and Effect

A mortgage regarded as collateral security belongs to the owner of the debt, and is deemed to have no situs except that of the domicile of the owner, and, if owned by one not a resident of the state, is not property in the state, subject to taxation, and can only be assessed at the domicile or place of residence of the creditor, without regard to the domicile of the debtor. *Holland v. Board of Commissioners*, 15 M 460, 462, 39 P 575. See, also, *Monidah Trust v. Sheehan*, 45 M 424, 430, 123 P 692.

The provisions of the code relating to revenue, contain a scheme for assessment, equalization, and collection of taxes complete in itself, which is available for all taxing purposes for the state, county, and subdivisions of counties. The fundamental idea of this scheme or plan is that there must be one tax-roll for all purposes, and that the board of county commissioners must levy all taxes for the county and its subdivisions, except incorporated cities and towns which have ordinances providing for the assessment and collection of their own taxes. *Hilburn v. St. Paul etc. Ry. Co.*, 23 M 229, 242, 58 P 551.

The separate estates which different persons may own in the same land, as where one owns the surface, another the growing timber, and a third the mineral underground, may each be subject to taxation, except such as specifically exempted.

Northern Pac. Ry. Co. v. Mjelde, 48 M 287, 295, 137 P 386.

Where lands are sold with reservations in the grantor of minerals therein and the right to mine the same, as well as of a right of way over them for mining purposes, and for the removal of timber from adjoining lands, such reservations constitute property subject to taxation under this section and section 84-101. *Anaconda C. Min. Co. v. Ravalli County*, 52 M 422, 425, 158 P 682.

Held, that shares of stock in foreign corporations owned by a legal resident of the state who, however, for all intents and purposes had left Montana and was doing business as a stock broker in the city of New York, which shares had never been within this state but were held and had their business situs in the state of New York, were not subject to taxation within this state. *State ex rel. Rankin v. Harrington*, 68 M 1, 16 et seq., 217 P 681.

Id. The taxing power of the state does not extend beyond its territorial limits.

Id. Shares of stock, if within the state, whether belonging to residents or non-residents are proper subjects of taxation.

Id. The maximum "mobilia sequuntur personam" as applied to determine the situs of personal property for purposes of taxation is not of universal application but must give way in the face of contrary facts.

Id. Shares of stock in corporations are deemed intangible property taxable at the residence of their owner, except where there is such a combination of circumstances as produce what is referred to in the books as a business situs as distinguished from the domicile of the owner.

Id. The state may tax a resident upon his stocks in foreign corporations which have no situs other than the domicile of their owner.

Id. Where shares of stock are kept out of the state for the purpose of evading taxation they are not within the rule as to business situs but are controlled by the maxim *mobilia sequuntur personam*, and are taxable at the domicile of their owner.

The real estate, furniture and fixtures and moneyed capital of a state bank, constitute all its taxable property. *East Helena State Bank v. Rogers*, 73 M 210, 212, 236 P 1090.

The securities of the United States held by a bank are not taxable by the state directly or indirectly. *Montana Nat. Bank v. Yellowstone County*, 78 M 62, 84, 252 P 876.

Id. To the extent that shares of stock of a bank have a value over and above the taxable real and personal property of the bank, they are taxable, under the constitutional command (sections 1 and 2, article XII) that all property, other than

that specially exempted, must be taxed without reference to the character of the securities which go to make up that value.

References

Cited or applied as section 3670, political code, in *Montana Coal & Coke Co. v. Livingston*, 21 M 59, 52 P 780; *Daly Bank etc. Co. v. Board of Commrs.*, 33 M 101, 106, 81 P 950; as section 2498, revised codes, in *Cobban v. Meagher*, 42 M 399, 407, 113 P 290; *Northern Pac. Ry. Co. v. Musselshell Co.*, 54 M 96, 108, 169 P 53; *Cruse v. Fischl*, 55 M 258, 263, 175 P 878; *Homestake Exploration Corp. v. Shoregge*, 81 M 604, 264 P 388; *Simpson v. Silver Bow County*, 87 M 83, 93, 285 P 195; *Rosebud County v. Smith et al.*, 9 P 2d 1071; *Johnson v. Meagher County*, 116 M 565, 567, 155 P 2d 750; *Foreman v. Beaverhead County*, 117 M 557, 562, 161 P 2d 524.

Taxation 59 et seq.

61 C.J. Taxation § 123 et seq.

51 Am. Jur. 431, Taxation, §§ 408 et seq.

84-202. (1998) **Exemptions from taxation.** The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, places of actual religious worship, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt; provided, that the terms public art galleries and public observatories used in this act shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only, and also when a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

History: Ap. p. Sec. 2, p. 73, L. 1891; 2499, Rev. C. 1907; amd. Sec. 1, Ch. 97, re-en. Sec. 3671, Pol. C. 1895; re-en. Sec. L. 1911; amd. Sec. 1, Ch. 24, L. 1919;

re-en. Sec. 1998, R. C. M. 1921; amd. Sec. 1, Ch. 98, L. 1931. Cal. Pol. C. Secs. 3607 and 3611.

Cross-References

Airport property, sec. 1-823.
Cemetery associations, tax exempt, sec. 9-118.
Fire department members exempt from poll tax, sec. 11-2004.
Militiamen exempt from poll tax, sec. 77-403.
Rural electric cooperatives, exemption from excise and income tax, sec. 14-528.
Teachers retirement system benefits, sec. 75-2713.
Water users' association, exemption, sec. 25-110.

Assessments Within Irrigation District; Not "Taxes"

Assessments for irrigation district purposes in their nature akin to special assessments for local improvements, are not "taxes" within the meaning of this section and art. XII, sec. 2 of the constitution declaring that state property shall be exempt from taxation, and state owned lands within the district are subject to assessments levied by the district for district purposes. Toole County Irrigation District v. State, 104 M 420, 434, 67 P 2d 989.

Constitutionality—Extends to Real Property

Held, that this section is constitutional; and that it was within the power of the legislature to declare it the policy of the state, based upon an admissible construction of the federal statutes in that behalf, that title to the funds received from the United States as pension, etc., after their delivery to the guardian should remain in the United States, and that the benefit of such statutes should extend to real property purchased with such funds. Henderson v. City of Missoula, 106 M 596, 602, 79 P 2d 547.

Evidence of Debt Secured by Mortgages

Held, that chapter 64, laws of 1929 (84-303 to 84-308) in providing that mortgages on real and personal property belonging to a banking institution shall be included in the computation looking to the ascertainment of the value of its moneyed capital and its shares of stock for taxation purposes, while others owning mortgages are exempt from taxation thereon, does not violate the state or federal constitutions. Bank of Miles City v. Custer County, 93 M 291, 298, 19 P 2d 885.

Operation and Effect

State and county bonds held in private ownership within the state are "prop-

erty," within the meaning of that term as employed in the constitution and revenue laws of the state, and, not being declared exempt, are taxable as such. Cruse v. Fischl, 55 M 258, 265, 175 P 878.

Id. The constitution expresses the entire will of the people with respect to property absolutely exempt from taxation, and the extent of legislative power to create exemptions; this section authorizing exemptions from taxation is therefore to be construed strictly; nothing is to be implied; the lawmakers exhausted their power to relieve property from taxation; all other property within the state is subject to taxation under the preceding section.

Property of Charities

The provisions of the constitution and of this section, making certain property exempt from taxation, do not extend to a charitable institution as an association or corporate body, but only to such property of the institution as is used exclusively for charitable purposes, and the mere intention of such institution to devote certain of its lands to the erection of buildings for charitable purposes does not change the rule. Montana Catholic Missions v. County of Lewis and Clark, 13 M 559, 564, 565, 35 P 2.

Property of a County

Where a city lot owned by the county is not used for county purposes and special municipal improvements enhance its value for building purposes, the county is liable for the payment of the consequent special assessments, constitutional and statutory provisions exempting its property from taxation not applying under such conditions. State v. Jefferies, 83 M 111, 115, 270 P 638.

Property of School Districts

Assessments for special municipal improvements are not taxes; hence constitutional and statutory provisions exempting property from taxation are not applicable to such assessments. Under this rule the property of a school district, devoted exclusively to school purposes, in the absence of express constitutional or statutory exemption, is liable for assessments made for special municipal improvements. City of Kalispell v. School Dist., 45 M 221, 228, 122 P 742. Compare with Ford v. Great Falls, 46 M 292, 308, 127 P 1004, in which the foregoing decision is commented upon and explained.

Property of the State

Lands to which the state retains the title under a contract of purchase are subject to taxation as property of the

purchaser. *Courtney v. Missoula County*, 21 M 591, 55 P 359.

Under section 1868, R. C. M. 1921, (omitted) lands purchased from the state on deferred payments may be taxed only at the percentage of the value of the land which the amount actually paid bears to the total purchase price. Under section 2, article XII, of the constitution and this section, state property is exempt from taxation. Instead of assessing only the interest of a purchaser of such lands represented by his initial payment, the assessor levied taxes upon them at their full cash value. Held, that taxes paid by the state under protest on the value in excess of the equity the purchaser had in the land were illegally levied as upon state property. (*Courtney v. Missoula County*, 21 M 591, 55 P 359, distinguished). *State v. Lewis and Clark County et al.*, 84 M 204, 206, 274 P 855.

Id. Held, under section 2, of article XII of the constitution, and under this section providing, *inter alia*, that state property is exempt from taxation, that where the purchaser of state lands reconveyed them to the state to obviate foreclosure of the mortgage thereon, the lands were thereafter property of the state and nontaxable, entitling it to recover back taxes paid thereon under protest.

Property of the United States

Property belonging to the United States is exempt from special assessments, as well as from ordinary taxes, even in the absence of such provisions relative thereto as those found in the constitution or state laws. *Ford v. City of Great Falls*, 46 M 292, 308, 127 P 1004.

Property of a state bank represented by bonds of the United States is exempt from taxation under the supreme law of the land, irrespective of the fact that it is not made so by the state constitution or statutes. *East Helena Bank v. Rogers*, 73 M 210, 218, 236 P 1090.

The securities of the United States held by a bank are not taxable by the state, directly or indirectly. *Montana Nat. Bank*

v. Yellowstone County, 78 M 62, 84, 252 P 876.

Id. To the extent that shares of stock of a bank have a value over and above the taxable real and personal property of the bank they are taxable, under the constitutional provision that all property, other than that specially exempted, must be taxed, without reference to the character of the securities which go to make up that value.

State May Tax Production Under Lease of Trust Patent Indian Land

Held, that the state board of equalization is authorized to tax the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 101 M 268, 288, 54 P 2d 117, with exception of the royalty owner's net proceeds tax, for the reason that the federal supreme court overruled its holdings upon which the state court's former opinion was based). *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 112 M 359, 361, 116 P 2d 1012.

References

Cited or applied as section 2499, revised codes, before amendment, in *Cobban v. Meagher*, 42 M 399, 407, 113 P 290; *Northern Pac. Ry. Co. v. Mjelde*, 48 M 287, 295, 137 P 286; *State ex rel. General Electric Co. v. Alderson*, 49 M 29, 33, 140 P 82; *Wells Fargo & Co. v. Harrington*, 54 M 235, 240, 169 P 463; *State ex rel. Rankin v. Harrington*, 68 M 1, 28, 217 P 681; *Commercial N. B. et al. v. Custer County et al.*, 76 M 45, 51, 245 P 259; *State ex rel. Walker et al. v. Jones*, 80 M 574, 585, 261 P 356; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *Foreman v. Beaverhead County*, 117 M 557, 562, 161 P 2d 524.

Taxation—191 et seq.

61 C.J. Taxation § 383 et seq.

51 Am. Jur. 502, Taxation, §§ 495 et seq.

84-203. Tax exemption of certain state lands used for water conservation projects. All lands acquired and held by the state water conservation board or the state of Montana for use in connection with water conservation projects, constructed or to be constructed under the laws of this state, shall be exempt from taxation and it shall be the duty of the county treasurer to cancel all taxes remaining unpaid against said land for the year in which same is so acquired and for all previous years, provided, that such taxes shall be cancelled only in such cases as no tax certificates shall have issued or a tax certificate has issued to the county and no assignment of such certificate of

sale has been made by said county prior to the time when said land was acquired by said state water conservation board.

History: En. Sec. 1, Ch. 114, L. 1937.

Taxation 234.

61 C.J. Taxation § 497.

CHAPTER 3

CLASSIFICATION OF PROPERTY FOR TAXATION—BASIS FOR TAXATION

- Section 84-301. Classification of property for taxation.
 84-302. Basis for imposition of taxes.
 84-303. Moneys and credits defined for taxation purposes.
 84-304. Moneyed capital defined for taxation purposes.
 84-305. Deductions in determining moneyed capital.
 84-306. Book value of real estate of national banks deducted in assessing shares.
 84-307. Assessment of shares of state banks—deductions.
 84-308. Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares.

84-301
Amended
L. '51, c. 45
Sec. 1, p. 79;
c. 178, sec. 1
p. 366

84-301. (1999) Classification of property for taxation. For the purpose taxation the taxable property in the state shall be classified as follows:
Class One. The annual net proceeds of all mines and mining claims, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land to explore or prospect or dig for oil, gas, coal, or mineral is reserved in land by any person, or corporation, the surface title to which has passed to another, the assessor and the state and county boards of equalization shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal, or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family, and all personal property actually used by the owner for personal and domestic purposes, or for the furnishing or equipment of the family residence; all agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds, boats and all water craft, harness, saddlery and robes.

Class Three. Livestock, poultry, and all agricultural products except grain, hay and vegetables on the farm or in storage awaiting processing; stocks of merchandise of all sorts, together with furniture and fixtures used therewith; and all office or hotel furniture and fixtures.

Class Four. All land, town and city lots, with improvements, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana.

Class Five. (a) All moneys and credits, secured or unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that the terms "moneys and credits" as herein used shall not embrace the moneyed capital employed in the banking business by any banking corporation or individual in this state.

(b) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical associations organized under the laws of Montana.

(c) Grain, hay and vegetables on the farm, or in storage awaiting processing.

d - Lamm 1951 - H.B. 154 See Sec 1244 x11

Class Six. The shares of stock of national banking associations and the moneyed capital employed in conducting a banking business by any other banking corporation, association or individual in this state. Such money ascertained by deducting from the moneys and credits of such banking corporation, association, or individual, the amount of the deposits and any indebtedness representing money borrowed for use in said business, and the value of the shares of any national banking association, to be ascertained by deducting the value of all real estate of such association.

Class Seven. All property not included in the six preceding classes.

History: En. Sec. 1, Ch. 51, L. 1919; amd. Sec. 1, Ch. 248, L. 1921; re-en. Sec. 1999, R. C. M. 1921; amd. Sec. 1, Ch. 130, L. 1937; amd. Sec. 1, Ch. 107, L. 1941; amd. Sec. 1, Ch. 286, L. 1947.

Constitutionality

Held, that the classification law placing national bank stock in class 6, calling for an assessment of forty per cent of its true value, and moneyed capital coming into competition with the business of national banks in class 5, demanding an assessment of only seven per cent of its true value, contravenes the provisions of section 5219, U. S. revised statutes, and to that extent the classification law is invalid. *State v. Mady*, 83 M 418, 272 P 691. See earlier decision, *Commercial National Bank et al. v. Custer County et al.*, 76 M 45, 245 P 259.

Under section 11, of article XII, of the state constitution, taxes must be uniform upon the same class of subjects. Defendant assessor placed the stock of shareholders of a state bank in class 6 of this section, requiring payment of taxes on a basis of forty per cent of their value, while national bank shares—property of the same kind, character and class—he places in class 5, assessable at seven per cent of their true value. Held, on application for writ of injunction that the action of the taxing officer was discriminatory as against relator bank, and therefore void, but that, relator having asked that state bank shares be placed in the same class in which national bank shares were placed, and the taxing officers under the circumstances not being in position to object, it is proper to so place them, the question whether they could arbitrarily place such shares in class 5 being, however, reserved. *State v. Mady*, 83 M 418, 272 P 691.

Credits and Receivables in Business of Financing Motor Vehicles, Refrigerators, Etc.

Art. XII, sec. 7 of the state constitution authorizes the state to tax "all corporations in this state, or doing business therein" on all "corporate property" including "personal property owned or used by them". Held, on appeal from a judgment and order perpetually enjoining the county and city from collecting an ad valorem tax levied on credits and receivables in the business of financing sales of motor vehicles, refrigerators, etc. showing annually earned net profits, that these intangibles have a business situs in Montana and are here taxable. *Commercial Credit Co. v. O'Brien*, 115 M 199, 212, 146 P 2d 637.

Implements and Machinery

Machinery and electric appliances located in a substation and used by a railway company in the transformation of electric current employed in the propulsion of its trains, and engine pumps and pipes used for the pumping of water for use in the substation shop machinery and movable shop tools used for repairing equipment, properly fall within class 2 of this section and section 84-302, and within the designation "implements and machinery" and are therefore assessable at twenty per cent of their true value, and not within class 4. *Chicago etc. Ry. Co. v. Powell County*, 76 M 596, 597, 247 P 1096.

Improvements

Held, on application for writ of mandate, that improvements of a railroad right of way for purposes of taxation fall within class 4 of this section, providing for taxation of all land, with improvements thereon, and therefore are assessable at thirty per cent of their true and full value under section 84-302, and not

within class 7 embracing all property not included in the preceding six classes, and assessable at forty per cent of their true value. *State ex rel. Northern P. Ry. Co. v. Duncan*, 68 M 420, 423, 219 P 638.

Machinery Used for Generating Electricity for Railroad Purposes

Coal-burning steam boilers, electrical generators, etc., owned and used by a railway company in generating electricity for power purposes in its repair-shops and for lighting its yards, depot and offices, but not marketed or sold for profit, held to fall within class 2 of this section, and as such are taxable at 20 per cent. of their actual value (section 84-302), and not within class 4 as "manufacturing machinery" taxable at 30 per cent. of its value. *Chicago, M., St. P. & P. R. Co. v. Custer Co.*, 96 M 566, 569, 32 P 2d 8.

Manufacturing Machinery

While machinery capable of being used for and actually used in the generation of electricity as a business falls within the designation of "manufacturing machinery," within the meaning of this section, classifying property for purposes of taxation, it is the use to which it is devoted and its productivity which fix the rate of taxation. *Chicago, M., St. P. & P. R. Co. v. Custer Co.*, 96 M 566, 569, 32 P 2d 8.

Mining Property

Held, that coal lands purchased from the federal government must be taxed under section 3, article XII, of the constitution, at the price paid therefor and not at thirty per cent. of such purchase price, the rate at which real property is taxable under the classification act. *State ex rel. Hinz v. Moody*, 71 M 473, 476, 230 P 575.

Operation and Effect

This section providing for the classification of property for purposes of taxation does not infringe upon the guaranty of the equal protection of the laws. *Hilger v. Moore*, 56 M 146, 182 P 477.

Held, that a tax upon the moneyed capital of a state bank imposed under the classification act is a property tax and not an occupation or franchise tax. *East Helena State Bank v. Rogers*, 73 M 210, 211 et seq., 236 P 1090.

For the purposes of taxation, the use to which property is devoted and its productivity make up the measuring stick for determining its proper classification,—a matter within the power of the legislature. *Bank of Miles City v. Custer County*, 93 M 291, 301, 19 P 2d 885.

Id. The basis for classification of the thing classified for taxation purposes need

not be deducible from its nature, and discrimination merely is not inhibited, since there are discriminations which the best interests of society require.

Id. When there is a difference between various properties, it need not be great or conspicuous in order to warrant classification by taxing officer; for that purpose there is a difference in the doing of business and its results.

In the matter of refunding the state educational bonds under chapter 23, laws of 1931, (omitted) the issuance and sale of which were originally authorized by initiative measure No. 19, effective December 6, 1920, providing for their payment an annual levy at a given rate on each dollar of the assessed valuation of the taxable property in the state, measure No. 19 held a special act and as such controlling over the general classification act (this section and the following section) approved February 28, 1919 (laws of 1919, chap. 51), and which prescribes the taxable value, at a certain percentage of the assessed value, as the basis of taxation. *State ex rel. Judd v. Cooney et al.*, 97 M 75, 79, 32 P 2d 851.

Railroad Ties

In an action to recover taxes paid under protest held that the term supplies used in this section in declaring that machinery, fixtures and supplies shall fall under class 4 of the property designated therein for taxation purposes, was employed in its ordinary sense, and that railroad ties kept on hand for replacement or new construction fall fairly within its meaning, and were therefore unlawfully assessed under class 7, comprising all property not included in the six preceding classes, and taxable at a higher rate than that enumerated in class 4. *Northern Pac. Ry. Co. v. Sanders County*, 66 M 608, 610, 214 P 596.

Shares of State Banks

Individually owned shares of state bank stock are not "credits" as defined by subdivision 6 of this section, and therefore may not properly be placed in class 5 of the classification act; nor do they properly belong in class 6, which embraces only shares of national bank stock and moneyed capital owned by a bank and employed in its business, but in the absence of more specific provision should go into class 7, as property not included in the preceding six classes. *State v. Mady*, 83 M 418, 272 P 691.

Situs for Taxing Solvent Credits and Accounts Receivable

Where intangible property such as solvent credits or accounts receivable (auto-

mobile and refrigerator conditional sales contracts, etc.) are created and used in the conduct of a business by the owner in a state other than his domicile, such property has, for taxing purposes a situs in the state where such business is conducted, irrespective of the domicile of the owner, and the legal fiction expressed in the maxim *mobilia sequuntur personam*—moveables follow the person—does not apply. *Commercial Credit Co. v. O'Brien*, 115 M 199, 214, 146 P 2d 637.

Street Railway Tracks, Poles and Trolley Wires

Held, under this section, that the constituent parts of a street railway track, poles and trolley wires are personal property and taxable as such under the classification act, falling within class 7, at forty per cent. of its true and full value as property not included in the preceding six classes. *Butte Electric Ry. Co. v. Brett*, 80 M 12, 257 P 478.

Taxing Motor Vehicles

Assertion that the legislature in amending secs. 53-114 and 84-406 by enacting ch. 72, l. 1937, making special provision for taxing automobiles included in class 2 of this section, among other property without express amendment, singled out motor vehicles for special consideration and unlawfully discriminated against them, held not well made, since legislature may properly go even to placing identical articles in the hands of different owners, different uses resulting in different productivity. *Whier v. Dye*, 105 M 347, 354, 73 P 2d 209.

Tools, Implements and Machinery Not Used in Manufacture of Article of Trade

Tools, implements and machinery employed as an aid to the operation of a business not devoted to the manufacture of an article of trade, fall properly within class 2 of this section, and as such are taxable at 20 per cent. of their actual

value, under section 84-302. *Chicago, M., St. P. & P. R. Co. v. Custer Co.*, 96 M 566, 569, 32 P 2d 8.

Tailings Dump

Tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine." *Foreman v. Beaverhead County*, 117 M 557, 559, 561, 161 P 2d 524.

Id. Tailings dump containing valuable minerals was taxable as personal property in class 7.

References

First National Bank v. County of Dawson, 67 M 321, 334, 213 P 1097; *Wibaux Improvement Co. v. Breitenfeldt*, 67 M 206, 208, 215 P 222; *State ex rel. Rankin v. Harrington*, 68 M 1, 28, 217 P 681; *Heckman v. Custer County et al.*, 70 M 84, 85, 223 P 916; *Montana Nat. Bank v. Yellowstone County*, 78 M 62, 73 et seq., 252 P 876; *Homestake Exploration Corp. v. Schoregge*, 81 M 604, 613, 264 P 388; *First National Bank v. Sanders County*, 85 M 450, 453, 279 P 247; *State ex rel. Henderson v. Dawson County*, 87 M 122, 138, 286 P 125; *State ex rel. Schoonover v. Stewart*, 89 M 257, 271, 297 P 476; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *Merchants Nat. Bank v. Dawson County*, 93 M 310, 333, 19 P 2d 892; *Fruit Growers Express Co. v. Brett*, 94 M 281, 290, 22 P 2d 171; *British-American Oil Producing Co. v. State Board of Equalization*, 101 M 293, 300, 54 P 2d 129; *Northern Pacific Railway Co. v. Dunham*, 108 M 338, 343, 90 P 2d 506; *Rist v. Toole County*, 117 M 426, 441, 159 P 2d 340.

Taxation ¶42(1-4), 61 et seq.

61 C.J. *Taxation* §§ 58-64, 134 et seq.

51 Am. Jur., *Taxation*, p. 230, §§ 173 et seq.; p. 431, §§ 408 et seq.

84-302. (2000) Basis for imposition of taxes. As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

- Class 1. One hundred per cent. of its true and full value.
- Class 2. Twenty per cent. of its true and full value.
- Class 3. Thirty-three and one-third per cent. of its true and full value.
- Class 4. Thirty per cent. of its true and full value. ✓
- Class 5. Seven per cent. of its true and full value.
- Class 6. Forty per cent. of its true and full value.
- Class 7. Forty per cent. of its true and full value.

History: En. Sec. 2, Ch. 51, L. 1919; re-en. Sec. 2000, R. C. M. 1921.

NOTE.—See annotations under section 84-301, as these two sections are cited and construed together.

Constitutionality

This section is not invalid as in violation of the principle of uniformity of taxation declared by section 1, of article XII, of the constitution of Montana. *Hilger v. Moore*, 56 M 146, 182 P 477.

84-303. (2000.1) Moneys and credits defined for taxation purposes.

That moneys and credits are hereby defined for the purpose of taxation as all moneys not constituting moneyed capital as hereinafter defined, and all credits secured and unsecured, including all state, county, school district and other municipal bonds, warrants and securities, without any deduction or offset; provided, however, that credits, as herein defined, shall not embrace credits constituting moneyed capital as hereinafter defined or evidence of debt secured by mortgage of record upon real or personal property in the state of Montana.

History: En. Sec. 1, Ch. 64, L. 1929.

Constitutionality and Validity in General

Held, that the legislature in enacting chapter 64, laws of 1929, (sections 84-303 to 84-308), classifying moneys and credits for purposes of taxation properly exercised its power, as against the contention of a state bank that such a classification is invalid under section 11, article XII, of the state constitution and the fourteenth amendment to the federal constitution, since moneys and credits, when employed in the banking business have a greatly increased productivity as compared to moneys and credits in the hands of the ordinary individual or corporation using them for casual investment only. *Bank of Miles City v. Custer County*, 93 M 291, 309, 19 P 2d 885.

Id. Held, that this section, in providing that mortgages on real and personal property belonging to a banking institution shall be included in the computation looking to the ascertainment of the value of its moneyed capital and its shares of stock for taxation purposes, while others owning mortgages are exempt from taxation thereon (section 84-202), does not violate either state or federal constitution.

Id. Held, that the law provides for the taxation of the shares of all corporations, and therefore contention by a bank that it does not and that, for that reason, chapter 64, laws of 1929, in subjecting its shares to assessment is invalid as discriminatory, is without merit.

Id. While a statute, the principal purpose of which is to tax indirectly securities of the United States, is invalid, the indirect taxing thereof which may result

References

Northern Pacific Railway Co. v. Dunham, 108 M 338, 343, 90 P 2d 506; *Commercial Credit Co. v. O'Brien*, 115 M 199, 215, 146 P 2d 637; *Rist v. Toole County*, 117 M 426, 441, 159 P 2d 340.

Taxation ¶42(1-4), 347.

•61 C.J. *Taxation* §§ 60 et seq., 64 et seq., 65 et seq.

51 Am. Jur. 431, *Taxation*, §§ 408 et seq.

from taking such securities into consideration in determining the value of bank stock, together with the other assets of the bank, in conformity with this section, is not violative of the federal statutes exempting such securities from taxation.

Id. Chapter 64, laws of 1929, is not unconstitutional as conferring judicial discretion upon the assessor in failing to prescribe a definite rule for determining when moneyed capital comes in competition with banks.

Id. Chapter 64, laws of 1929, and chapter 64, laws of 1927 (84-4605), so far as they relate to taxation of moneyed capital and shares of stock of state banks, in requiring reports for purposes of assessment by a banking corporation, though none is required from owners of competing capital, are not special laws in contravention of section 26, article V, of the constitution, the taxing officers under other provisions of law having authority to call for such reports.

Held, that chapter 64, laws of 1929, providing for the taxation of banking institutions, is not invalid as delegating to taxing officers judicial powers, by failing to prescribe a definite and certain guide by which to determine when moneys and credits do or do not come in competition with the business of a national bank. *Merchants' Nat. Bk. v. Dawson County*, 93 M 310, 316 et seq., 19 P 2d 892.

Id. Held, that chapter 64, laws of 1929, in providing for the classification of moneyed capital, and imposing certain duties upon the assessor, does not violate the constitutional provision above, but deals only with one subject, i.e., the taxation of a certain class of property, the

classification and assessment relating directly to that subject.

Operation and Effect

In the absence of an allegation in the complaint of a national bank in a tax suit that any of its shareholders were indebted to it, it will not be heard on appeal to assert that it was discriminated against in the matter of taxation of its stock, in that members of building and loan associations were, under chapter 64, laws of 1929, (sections 84-303 to 84-308), permitted to deduct their debts from the amounts standing to their credit on the

books of the associations, in determining the value of their stock, while the same privilege was not extended to the bank's shareholders with relation to their debts due the bank. *Merchants' Nat. Bk. v. Dawson County*, 93 M 310, 316 et seq., 19 P 2d 892.

References

Commercial Credit Co. v. O'Brien, 115 M 199, 215, 146 P 2d 637.

Taxation ⇨ 73, 74.

61 C.J. *Taxation* §§ 160 et seq., 168 et seq.

84-304. (2000.2) Moneyed capital defined for taxation purposes. Moneyed capital is hereby defined as moneys, bonds, notes and other evidence of indebtedness, including evidences of indebtedness secured by mortgage on real or personal property in the hands of individual citizens and corporations coming in competition with the business of national banks or employed in conducting a banking or investment business; provided, however, that bonds, notes and other evidence of indebtedness in the hands of individuals and corporations not employed or engaged in the banking or investment business and representing merely personal investments not made in competition with such business shall not be deemed moneyed capital.

History: En. Sec. 2, Ch. 64, L. 1929.

84-305. (2000.3) Deductions in determining moneyed capital. In assessing and ascertaining the value of moneyed capital for taxation, there shall be deducted from the amount of bonds, notes, and other evidence of indebtedness the amount of any deposits and any indebtedness representing money borrowed for use as moneyed capital.

History: En. Sec. 3, Ch. 64, L. 1929.

Taxation ⇨ 378(1).

61 C.J. *Taxation* § 836.

84-306. (2000.4) Book value of real estate of national banks deducted in assessing shares. In ascertaining the value of the shares of a national bank for the purpose of taxation there shall be deducted the book value of all real estate of said bank, which shall be assessed to said bank.

History: En. Sec. 4, Ch. 64, L. 1929; amd. Sec. 1, Ch. 34, L. 1939.

Constitutionality

Ch. 34, L. 1939 (84-306), amending this section, held not open to the objection that it offends against section 17, art. XII of the state constitution. *Miners National Bank of Butte v. County of Silver Bow*, 116 M 31, 38, 148 P 2d 538.

Statement of Bank to Taxing Authorities

This opinion sets forth what a bank's statement may show as undivided profits in adding to ledger balance including current earnings, interest accrued but not paid, expense accrued but not paid, interest collected but not earned, and deducting total of interest earned but not collected; when refusal of taxing author-

ities to permit deduction of unearned interest on long term notes justifiable, and when bank setting up reserve to make good possible losses on bonds and stocks improper, particularly where not all such securities depreciated in value. *Miners National Bank of Butte v. County of Silver Bow*, 116 M 31, 39, 41, 148 P 2d 538.

Tax on Bank Stock Calculated by Deduction of Book Value of Real Estate Rather Than Assessed Value

Held, that under this section, the county assessor in calculating the value of the shares of stock of a national bank for taxation purposes properly deducted the book value of its real estate, consisting of its bank building and fixtures, as fixed by bank examiners, from the total of its capital stock surplus and undivided prof-

its, rather than deducting the actual or assessed value of the property. *Miners National Bank of Butte v. County of Silver Bow*, 116 M 31, 34, 148 P 2d 538. Taxation \hookrightarrow 386(2). 61 C.J. Taxation § 848.

84-307. (2000.5) Assessment of shares of state banks—deductions. The shares of all state banking corporations engaged in the banking business in Montana shall be valued and assessed for the purpose of taxation at the full cash value thereof, less the value of the real estate, moneyed capital and other property of any such bank assessed and taxed as the property of said bank.

History: En. Sec. 5, Ch. 64, L. 1929.

84-308. (2000.6) Basis for imposition of taxes on moneys and credits, moneyed capital and bank shares. As a basis for the imposition of taxes upon the different classes of property herein specified, a percentage of the true and full value of each class shall be taken as follows:

Moneys and credits, seven per centum (7%) of true and full value.

Moneyed capital and shares of banks, both national and state, thirty per centum (30%) of true and full value.

History: En. Sec. 6, Ch. 64, L. 1929.

Taxation \hookrightarrow 351.
61 C.J. Taxation § 804.

CHAPTER 4

ASSESSMENT OF PROPERTY—POWERS, DUTIES AND LIABILITY OF COUNTY ASSESSOR

- Section 84-401. Property assessed at cash value.
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- 84-451. Statistics, how obtained.
- 84-452. Penalty for refusal to furnish statistics.
- 84-453. Penalty for neglect of act by officer.

84-401. (2001) Property assessed at cash value. All taxable property must be assessed at its full cash value. Land and the improvements thereon must be separately assessed.

History: En. Sec. 5, p. 76, L. 1891; re-en. Sec. 3690, Pol. C. 1895; re-en. Sec. 2502, Rev. C. 1907; re-en. Sec. 2001, R. C. M. 1921. Cal. Pol. C. Sec. 3627.

Operation and Effect

The difficulty which may confront the assessor in ascertaining the full cash value of an interest in real estate reserved by the grantor in himself in a deed conveying the land may not be taken into account in determining whether such interest is subject to taxation. *Northern Pac. Ry. Co. v. Mjelde*, 48 M 287, 304, 305, 137 P 386.

The stock of a national bank is assessable at its full cash value, less the amount of property representing that stock which has been otherwise taxed. *Dennis v. First Nat. Bank of Great Falls*, 55 M 448, 456, 178 P 580.

This section is not in anywise affected by sections 2123 et seq. (since repealed), and 84-901 et seq., and is to be considered in connection with them. *State v. State Board of Equalization*, 56 M 413, 444, 185 P 708.

References

Cited or applied as section 3690, political code, in *First National Bank v. Province*, 20 M 374, 376, 51 P 821; *Danforth v. Livingston*, 23 M 558, 59 P 916; *State*

v. Fortune, 24 M 154, 157, 60 P 1086; *Daly Bank etc. Co. v. Board of Commrs.*, 33 M 106, 81 P 950; as section 2502, revised codes, in *State ex rel. General Electric Co. v. Alderson*, 49 M 29, 33, 140 P 82; *Wells Fargo Co. v. Harrington*, 54 M 235, 242, 169 P 463; *Hilger v. Moore*, 56 M 146, 166, 182 P 477; *State ex rel. Rankin v. Harrington*, 68 M 1, 28, 217 P 681; *State ex rel. Northern P. Ry. Co. v. Duncan*, 68 M 420, 219 P 638; *Montana Nat. Bank v. Yellowstone County*, 78 M 62, 84, 252 P 876; *Betty v. City of Sidney*, 79 M 314, 322, 257 P 1007; *State ex rel. Schoonover v. Stewart*, 89 M 257, 270, 297 P 476; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *State ex rel. Judd v. Cooney et al.*, 97 M 75, 79, 32 P 2d 851; *Rist v. Toole County*, 117 M 426, 441, 159 P 2d 340.

Taxation—347.

61 C.J. Taxation § 789 et seq.

51 Am. Jur., Taxation, p. 614, §§ 647 et seq.; p. 648, §§ 696 et seq.; p. 705, §§ 780 et seq.

Power of board of tax review to receive evidence as to assessable value without notice to taxpayer. 113 ALR 990.

Price paid or received by taxpayer for property as evidence of its value for tax purposes. 160 ALR 684.

84-402. (2001.1) Assessor to determine and show percentage basis and taxable value computed thereon. The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the county assessors of the various counties of the state of Montana, and the taxable value thereupon computed when they make their annual assess-

ments, and copies of such assessments as provided for in section 84-411 shall show the taxpayer the percentage class to which the assessor has assigned his various classes of property for taxation and the taxable valuation thereof.

History: En. Sec. 1, Ch. 61, L. 1925; Taxation 336(1).
amd. Sec. 1, Ch. 100, L. 1939. 61 C.J. Taxation § 772 et seq.

References

Chicago etc. Ry. Co. v. Powell County,
76 M 596, 600, 247 P 1096.

84-403. (2001.2) Appeal for taxpayer aggrieved at percentage assignment. If any taxpayer shall feel aggrieved at the percentage assignment so made by the county assessor, he shall have the right to appeal to the county board of equalization, on the percentage assignment the same as he now has on valuations, and also, the right to appeal from the county board of equalization to the state board of equalization, whose findings shall be final except as to, the right of review in the proper courts.

History: En. Sec. 2, Ch. 61, L. 1925. Taxation 459.
61 C.J. Taxation § 1006.

84-404. (2001.3) State board of equalization to assign percentage basis, when. The percentage basis of true and full value as provided for in section 84-302, shall be determined and assigned by the state board of equalization, when it makes its annual assessment of the property, which it is required to assess under the constitution or the laws of this state and shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination shall be final except as to the right of review in the proper court.

History: En. Sec. 3, Ch. 61, L. 1925. Taxation 450(2, 3).
61 C.J. Taxation § 952 et seq.

84-405. (2001.5) Assessor's blanks and rolls to be provided by state board. It shall be made the duty of the state board of equalization to prescribe such forms of assessment blanks and assessor's rolls as will comply with the above provisions, grouping all the same percentage class as nearly as possible in one group on blanks and assessor's roll.

History: En. Sec. 5, Ch. 61, L. 1925. Taxation 412.
61 C.J. Taxation § 865 et seq.

84-406. (2002) When assessment to be made—credits must be assessed, how. (1) The assessor must, between the first Monday of March and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in his county subject to taxation, except such as is required to be assessed by the state board of equalization, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at twelve o'clock M. of the first Monday of March next preceding, except that such procedure shall not apply to motor vehicles which shall be assessed at the time fixed in (2) hereof; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid. Credits must be assessed as provided in section 84-101, subdivision 6.

(2) The assessor must ascertain and assess all motor vehicles in his county subject to taxation as of January 1st in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at twelve o'clock M. of the first day of January in each year.

Nothing herein contained shall relieve the applicant for registration or re-registration of any motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

History: En. Sec. 13, p. 78, L. 1891; re-en. Sec. 3700, Pol. C. 1895; re-en. Sec. 2510, Rev. C. 1907; re-en. Sec. 2002, R. C. M. 1921; amd. Sec. 3, Ch. 158, L. 1933; amd. Sec. 1, Ch. 30, L. 1935; amd. Sec. 9, Ch. 72, L. 1937. Cal. Pol. C. Sec. 3628.

Constitutionality

Assertion that legislature in amending this section by enacting ch. 72, l. 1937 (53-114 et seq.) and making special provision for taxing automobiles included in class 2 of sec. 84-301, among other property without first amending such section, unlawfully discriminated against motor vehicles, held not well made, since the legislature may properly go even to the extent of placing identical articles in the hands of different owners, different uses resulting in different productivity. Held, not violative of art. XII, sec. 11 and art. III, sec. 27 of the constitution. *Whier v. Dye*, 105 M 347, 354, 73 P 2d 209.

Federal Government Immune When Holding Equitable Title, and It or Its Vendor May Recover Back

When the United States entered into an enforceable option contract for the purchase of land in April, 1938, and in June it exercised the option, took possession and made extensive improvements, the formal deed not being delivered until Nov. 1939, it paid the taxes for the year 1939 under protest, under a clause that it might do so and deduct them from the purchase price, and assigned its claim to recover them back to the vendor. Held, in vendor's action to recover back, that the government being holder of the equitable title, was owner for purposes of taxation, immune for the year in question, and plaintiff assignee entitled to recover back. *Calvin v. Custer County*, 111 M 162, 168, 107 P 2d 134.

Meaning of "Assess"

Where the legislature has clearly adopted a definition of a word used in a statute at variance with that found in dictionaries and court decisions, the supreme court will follow the definition as found in the statute; under this rule the word

"assess" as used in this section held, to have the same meaning as in section 2002.1 R. C. M. 1935, now repealed. *State ex rel. State Board of Equalization v. Jacobson*, 107 M 461, 464, 86 P 2d 9.

Misnomer

The listing of land in the name of a person other than the owner is not an irregularity or informality which, of itself, does not avoid the assessment nor render the tax illegal or unauthorized, and affords no ground for restraining the collection, by sale of the property itself, of the taxes due thereon. *Cobban v. Hinds*, 23 M 338, 349, 59 P 1.

The provisions of this section and section 84-415, post, are mandatory, and, with the qualifications therein mentioned, require the assessor to assess personal property in the name of the real owner, if known; if not known, then to "unknown owners." A misnomer of the owner of personal property assessed as the property of a particular person vitiates the assessment, and renders a sale thereunder void. *Birney v. Warren*, 28 M 64, 67, 72 P 293. See, also, *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 525, 134 P 302.

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire ten-year period, did not affect the right of the latter, in view of this section, declaring that a mistake in the name of the owner does not render the assessment invalid, and section 84-442, to the effect that no assessment or collection of taxes is illegal on account of informality. *Anderson v. Mace et al.*, 99 M 421, 430, 45 P 2d 771.

Operation and Effect

The assessment and sale of property for delinquent taxes is a proceeding in invitum; the purchaser at such sale buys at his peril, and the rule of caveat emptor applies. *Birney v. Warren*, 28 M 64, 68, 72 P 293; *Larson v. Peppard*, 38 M 128, 133, 99 P 136.

The authorized capital stock of a corporation engaged solely in a general real estate business, and which does not own any of its capital stock, was not taxable, as such, against the corporation. *Butte Land & Investment Co. v. Sheehan*, 44 M 371, 372, 120 P 241. See note to section 7, article XII, constitution of Montana.

Where an assessor listed for taxation lands with the reservation of minerals, mining rights, etc., to the grantee for the full cash value, and at the same time, assessed the grantor's reservations at a certain amount per acre, it was deemed to be a case of double taxation. The grantor was in no position to complain of the double assessment, however, as the only person who could do so was the one who was made to bear more than his proportion of the burden of taxation. *Anaconda C. Min. Co. v. Ravalli County*, 52 M 422, 425, 158 P 682.

Property in Interstate Commerce Not Taxable

Personal property being transported in interstate commerce is beyond the reach of state taxation, even though its owner resides within the state seeking to make a levy thereon. *Ford Motor Co. v. Linnane*, 102 M 325, 336, 57 P 2d 803.

Property Must Have Acquired Situs

In order for personal property to acquire a situs for the purpose of taxation, it must be within the state and subject to its jurisdiction at 12 o'clock noon on the first Monday of March. *Ford Motor Co. v. Linnane*, 102 M 325, 331, 57 P 2d 803.

Tax Not Escapable by December 31st Trade-in

Contention that under this act tax is escapable by making a practice of trading in or selling motor vehicle on December 31st each year is fallacious since the dealer, or purchaser would have to pay the tax; in such case the burden of paying the tax is merely shifted. *Wheir v. Dye*, 105 M 347, 356, 73 P 2d 209.

Payment of Delinquent Taxes Not Pre-requisite to Registration of Motor Vehicle

Under this section, as amended by sec. 9, ch. 72, laws of 1937, the owner of a motor vehicle is not required to pay de-

linquent taxes previously assessed as a condition precedent to securing license plates, even though such taxes are not a lien upon realty. *State ex rel. Kleve v. Fischl et al.*, 106 M 282, 285, 77 P 2d 392.

Application to Cars Held in Stock by Dealer on Tax Day

Chapter 72, laws of 1937, amending this section, cannot be construed that a dealer must pay taxes on all cars held in stock on January 1 before he can sell any of them, or that a purchaser of such car must pay all taxes assessed to the dealer and covering other cars before he may obtain license plates. He must pay the tax applicable to his own car, based on 33½ per cent of the valuation at which the car was assessed against the dealer. *State ex rel. Sadler v. Evans et al.*, 106 M 286, 293, 77 P 2d 394.

References

Cited or applied as section 3700, political code, in *Montana Coal & Coke Co. v. Livingston*, 21 M 59, 60, 52 P 780; *Danforth v. Livingston*, 23 M 558, 562, 59 P 916; *Flowerree Cattle Co. v. Lewis and Clark Co.*, 33 M 32, 35, 81 P 398; *Coburn Cattle Co. v. Small*, 35 M 288, 293, 88 P 953; as section 2510, revised codes, in *Westchester Fire Ins. Co. v. Sullivan*, 45 M 18, 19, 121 P 472; *Hill v. County of Lewis and Clark*, 54 M 479, 483, 171 P 929; *Hayes v. Smith*, 58 M 306, 312, 192 P 615; *Averill Machinery Co. v. Freebury Bros.*, 59 M 594, 598, 198 P 130; *State ex rel. Rankin v. Harrington*, 68 M 1, 17, 217 P 681; *Butte, Electric Ry. Co. v. McIntyre*, 71 M 21, 22, 227 P 61; *Northern Pac. Ry. Co. v. Musselshell Co.*, 74 M 81, 87, 238 P 872; *Montana Nat. Bank v. Yellowstone County*, 78 M 62, 252 P 876; *State v. Lewis and Clark County*, 84 M 200, 202, 274 P 854; *State ex rel. Blair v. Kuhr*, 86 M 377, 283 P 758; *Simpson v. Silver Bow County*, 87 M 83, 93, 285 P 195; *State ex rel. Schoonover v. Stewart*, 89 M 257, 297 P 476; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *County of Musselshell v. Morris Dev. Co.*, 92 M 201, 210, 11 P 2d 774; *Sutter v. Scudder*, 110 M 390, 393, 103 P 2d 303.

Taxation—318.

61 C.J. Taxation § 761.

84-407. (2002.1) and **84-408.** (2002.2) **Repealed—Chapter 159, laws of 1947.**

84-409. (2003) **Statement—what to contain.** He must require from each person a statement under oath setting forth specifically all the real and personal property owned by such person, or in his possession, or under his control at twelve o'clock m. on the first Monday in March. Such statement must be in writing, showing separately:

1. All property belonging to, claimed by, or in the possession, or under the control or management of such person.

2. All property belonging to, claimed by, or in the possession, or under the control or management of any firm of which such person is a member.

3. All property belonging to, claimed by, or in the possession, or under the control or management of any corporation of which such person is president, secretary, cashier, or managing agent.

4. The county in which such property is situated, or in which it is liable to taxation, and (if liable to taxation in the county in which the statement is made) also the city, town, school district, road district, or other revenue districts in which it is situated.

5. An exact description of all lands in parcels or subdivisions, not exceeding six hundred and forty acres each, and the sections and fractional sections of all tracts of land containing more than six hundred and forty acres which have been sectionized by the United States government; improvements, and personal property, including all vessels, steamers, and other water-craft, and all taxable state, county, city, or other municipal or public bonds, and the taxable bonds of any person, firm, or corporation, and deposits of money, gold-dust, or other valuables, and the names of the persons with whom such deposits are made, and the places in which they may be found; all mortgages, deeds of trust, contracts, and other obligations by which a debt is secured, and the property in the county affected thereby.

6. All solvent credits, secured or unsecured, due or owing to such person or any firm of which he is a member, or due or owing to any corporation of which he is president, secretary, cashier, or managing agent.

Whenever one member of a firm, or one of the proper officers of a corporation, has made a statement showing the property of the firm or corporation, another member of the firm, or another officer, need not include such property in the statement made by him; but this statement must show the name of the person or officer who made the statement in which such property is included.

7. All depots, shops, stations, buildings, and other structures erected on the space covered by the right of way, and all other property owned by any person, corporation, or association of persons, owning or operating any railroad within the county.

The fact that such statement is not required, or that a person has not made such statement under oath, or otherwise, does not relieve his property from taxation.

History: En. Sec. 14, p. 78, L. 1891; amd. Sec. 3701, Pol. C. 1895; re-en. Sec. 2511, Rev. C. 1907; re-en. Sec. 2003, R. C. M. 1921. Cal. Pol. C. Sec. 3629.

Operation and Effect

An increase in an assessment by the assessor in obedience to a void order of the board of equalization cannot be sustained under this section or section 84-442. *Western Ranches v. Custer County*, 28 M 278, 283, 72 P 659.

It was the duty of a county assessor to require from the agent of a company to

be assessed a verified list of its property in his county on the first Monday of March, which list, among other things, must have shown the particular property belonging to the company, and the county in which it was situated, or in which it was liable to taxation. *Flowerree Cattle Co. v. Lewis and Clark County*, 33 M 32, 36, 81 P 398.

The purpose of subdivision 6 of this section being merely to ascertain the just amount and value of property subject to taxation, in conformity with section 1 of article XII of the constitution, does not

have the effect of exempting from taxation property other than that enumerated in section 2 of said article, and it is therefore constitutional. *Daly Bank etc. Co. v. Board of Commrs.*, 33 M 101, 107, 81 P 950.

The provisions of this section are general and applicable alike to all taxpayers, whether natural persons or corporations. *Daly Bank etc. Co. v. Board of Commrs.*, 33 M 101, 107, 81 P 950; *Clark v. Maher*, 34 M 391, 399, 87 P 272.

This section authorizes any taxpayer to deduct or have deducted from his credits all debts then owing by him; but it does not authorize the deduction of debts from money on hand, and, if it attempted to do so, would clearly violate the provisions of the constitution. *Clark v. Maher*, 34 M 391, 399, 87 P 272.

Snowsheds constructed of reinforced concrete and steel, with timber roofs, the walls of which on the mountain-side of the track were imbedded in the ground four feet or more, the outer walls consisting of a series of piers grounded in holes from a foot to twelve feet deep, held part of defendant railway company's roadbed, and

as such assessable, under section 16, article XII of the constitution, by the state board of equalization and not by the county assessor. *Great Northern Ry. Co. v. Flathead Co.*, 61 M 263, 267, 202 P 198.

References

Cited or applied as subdivision 7, section 14, laws of 1891, p. 78, in *Northern Pac. Ry. Co. v. Brogan*, 52 M 461, 464, 158 P 820; as section 2511, revised codes, in *State v. State Board of Equalization*, 56 M 413, 438, 185 P 708; *Hayes v. Smith*, 58 M 306, 312, 192 P 615; *State ex rel. Rankin v. Harrington*, 68 M 1, 17, 217 P 681; *State ex rel. Northern P. Ry. Co. v. Duncan*, 68 M 420, 424, 219 P 638; *Montana Nat. Bank v. Yellowstone County*, 78 M 62, 84, 252 P 876; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *Bank of Miles City v. Custer County*, 93 M 291, 19 P 2d 885; *Ford Motor Co. v. Linnane*, 102 M 325, 333, 57 P 2d 803.

Taxation⊕329, 331, 332.

61 C.J. Taxation §§ 728 et seq., 763 et seq.

84-410. (2004) County commissioners to furnish blanks, etc. The board of county commissioners must furnish the assessor with blank forms of the statements provided for in the preceding section, affixing thereto an affidavit, which must be substantially as follows: "I,, do swear that I am a resident of the county of (naming it), and that my postoffice address is; that the above list contains a full and correct statement of all property subject to taxation, which I, or any firm of which I am a member, or any corporation, association, or company of which I am president, cashier, secretary, or managing agent, owned, claimed, possessed, or controlled at twelve o'clock m. on the first Monday in March last, and which is not already assessed this year; and that I have not in any manner whatsoever transferred or disposed of any property, or placed any property out of said county or my possession for the purpose of avoiding any assessment upon the same, or of making this statement; and that the debts therein stated as owing by me are justly due and owing to others." The affidavit to the statement on behalf of a firm or corporation must state the principal place of business of the firm or corporation, and in other respects must conform substantially to the preceding form. The time when taxes become delinquent, and the time of the meeting of the county board of equalization, must be stated in such form.

History: En. Sec. 15, p. 80, L. 1891; re-en. Sec. 3702, Pol. C. 1895; re-en. Sec. 2512, Rev. C. 1907; re-en. Sec. 2004, R. C. 1921. Cal. Pol. C. Sec. 3630.

References

Cited or applied as section 2512, revised codes, in *Hayes v. Smith*, 58 M 306, 312, 192 P 615; *State ex rel. Rankin v. Har-*

rington, 68 M 1, 28, 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *Ford Motor Co. v. Linnane*, 102 M 325, 333, 57 P 2d 803; *Lewis v. Bowman*, 113 M 68, 72, 121 P 2d 162.

Taxation⊕331.

61 C.J. Taxation §§ 763 et seq.

84-411. (2005) Statement to be filled out and returned to assessor. The assessor may fill out the statement at the time he presents it, or he may deliver it to the person and require him, within an appointed time, to return the same to him, properly filled out. The assessor must either in person or by mail deliver to the person making the statement a copy of the same, showing any corrections made thereto by such assessor.

History: En. Sec. 16, p. 80, L. 1891; re-en. Sec. 3703, Pol. C. 1895; re-en. Sec. 2513, Rev. C. 1907; re-en. Sec. 2005, R. C. M. 1921. Cal. Pol. C. Sec. 3631. Refusal to give lists to assessor, sec. 94-1506.

References

State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Cross-References

False statement to assessor, penalty, sec. 94-1507.

84-412. (2006) General powers of assessor. Every assessor has power:

1. To require any person found within such assessor's county to make and subscribe an affidavit, giving his name and place of residence and postoffice address.

2. To subpoena and examine any person in relation to any statement furnished to him, or which discloses property which is assessable in his county; and he may exercise this power in any county where the person whom he desires to examine may be found, but has no power to require such persons to appear before him in any other county than that in which the subpoena is served. Every person who refuses to furnish the statement hereinbefore required, or to make and subscribe such affidavit respecting his name and place of residence, or to appear and testify when requested so to do by the assessor, as above provided, for each and every refusal, and as often as the same is repeated, forfeits to the people of the state the sum of one hundred dollars, to be recovered by action brought in the name of the assessor in any police or justice's court. In case such affidavit shows the residence of the person making the same to be in any county other than that in which it is taken, or the statement discloses property in any county other than that in which it is made, the assessor must, in the respective case, file the affidavit or statement in his office, and transmit a copy of the same, certified by him, to the assessor of the county in which such residence or property is therein shown to be. All moneys recovered by any assessor under the provisions of this section must by him be paid into the treasury of his county.

History: En. Sec. 17, p. 81, L. 1891; re-en. Sec. 3704, Pol. C. 1895; re-en. Sec. 2514, Rev. C. 1907; re-en. Sec. 2006, R. C. M. 1921. Cal. Pol. C. Sec. 3632.

Cross-References

Farm statistics collected by, sec. 84-449 et seq.

Hail insurance, duties, sec. 82-1501.

Lists of purebred stock, secs. 46-1201 to 46-1203.

Salary, sec. 25-605.

School district valuation, sec. 75-3724.

Operation and Effect

Held, that where plaintiff, in an action to recover taxes paid under protest, had

not refused to furnish a statement of his taxable property but had furnished an incorrect one, the assessor was without power to make the arbitrary assessment provided for in section 84-413, but that the assessor should have proceeded to ascertain the facts under the powers granted him by this section, by citing plaintiff to appear before him and answer as to his property. Story v. Dixon, 64 M 206, 209, 208 P 592.

References

State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; Rosebud County v. Smith et al.,

92 M 75, 80, 9 P 2d 1071; Bank of Miles City v. Custer County, 93 M 291, 303, 19 P 2d 885.

Taxation 319(1).
61 C.J. Taxation § 763 et seq.

84-413. (2007) Method of making assessment upon refusal of statement. If any person, after demand made by the assessor, neglects or refuses to give, under oath, the statement herein provided for, or to comply with the other requirements of this title, the assessor must note the refusal on the assessment-book opposite his name, and must make an estimate of the value of the property of such person, and the value so fixed by the assessor must not be reduced by the board of county commissioners.

History: En. Sec. 18, p. 82, L. 1891; amd. Sec. 3705, Pol. C. 1895; re-en. Sec. 2515, Rev. C. 1907; re-en. Sec. 2007, R. C. M. 1921. Cal. Pol. C. Sec. 3633.

Operation and Effect

This section providing that upon refusal or neglect of a taxpayer to furnish to the assessor a statement of his property subject to taxation, the assessor may make an arbitrary estimate which shall be final, being highly penal, its scope should not be extended to a case not clearly within its provisions. *Story v. Dixon*, 64 M 206, 209, 208 P 592.

Held, that where plaintiff, in an action to recover taxes paid under protest, had not refused to furnish a statement of his taxable property but had furnished an incorrect one, the assessor was without power to make the arbitrary assessment pro-

vided for in this section but that the assessor should have proceeded to ascertain the facts under the powers granted him by section 84-412, by citing plaintiff to appear before him and answer as to his property. *Story v. Dixon*, 64 M 206, 209, 208 P 592.

References

State ex rel. Rankin v. Harrington, 68 M 1, 28, 217 P 681; Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071; Bank of Miles City v. Custer County, 93 M 291, 303, 19 P 2d 885; Superior Coal Co. v. Musselshell Co. et al., 98 M 501, 41 P 2d 14.

Taxation 336(2).
61 C.J. Taxation § 772 et seq.

84-414. (2008) Assessment of unknown or absent owners. If the owner or claimant of any property, not listed by another person, is absent or unknown, the assessor must make an estimate of the value of such property.

History: En. Sec. 19, p. 82, L. 1891; re-en. Sec. 3706, Pol. C. 1895; re-en. Sec. 2516, Rev. C. 1907; re-en. Sec. 2008, R. C. M. 1921. Cal. Pol. C. Sec. 3635.

References

Cited or applied as section 3706, polit-

ical code, in *Birney v. Warren*, 28 M 64, 67, 72 P 293; State ex rel. Rankin v. Harrington, 68 M 1, 17, 28, 217 P 681; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

51 Am. Jur. 641, Taxation, § 685.

84-415. (2009) Same—in whose name property to be assessed. If the name of the absent owner is known to the assessor, the property must be assessed in his name; if unknown, the property must be assessed to unknown owners.

History: En. Sec. 20, p. 82, L. 1891; re-en. Sec. 3707, Pol. C. 1895; re-en. Sec. 2517, Rev. C. 1907; re-en. Sec. 2009, R. C. M. 1921. Cal. Pol. C. Sec. 3636.

Operation and Effect

The owner of personal property (a traction engine) which had been left standing on open ground near a town for more than a year, apparently not in the care or custody of anyone, and bearing the impress of abandoned property, was in no position to complain that it had been

assessed to "unknown owners" and sold for delinquent taxes, where he had done nothing in the way of notifying the assessor that it was his property nor made an effort to pay or offer to pay the taxes. *Averill Machinery Co. v. Freebury Bros.*, 59 M 594, 598, 198 P 130, cited as 2517, revised codes.

References

Cited or applied as section 3707, political code, in *Birney v. Warren*, 28 M 64, 67, 72 P 293; *Hill v. County of Lewis and*

Clark, 54 M 479, 483, 171 P 929; State ex rel. Rankin v. Harrington, 68 M 1, 17, 28, 217 P 681; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071; Sutter v.

Scudder, 110 M 390, 393, 103 P 2d 303; State v. North American Car Corporation, — M —, 164 P 2d 161, 163.

84-416. (2010) Property situated in another county. The assessor, as soon as he receives a statement of any taxable property situated in another county, must make a copy of such statement for each county in which the same is situated, and transmit the same by mail to the assessor of the proper county, who must assess the same as other taxable property therein.

History: En. Sec. 3708, Pol. C. 1895; re-en. Sec. 2518, Rev. C. 1907; re-en. Sec. 2010, R. C. M. 1921. Cal. Pol. C. Sec. 3637.

Operation and Effect

Where live stock was caused to be driven by a corporation from the county in which it maintained its headquarters, where its real estate was situated, and where its business manager and foreman resided, into another county to be wintered, but with the intention of having it returned to the former county in the fol-

lowing spring, the situs of such live stock for the purposes of taxation was in the former county. Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 37, 81 P 398.

References

State ex rel. Rankin v. Harrington, 68 M 1, 17, 28, 217 P 681; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation—322.

61 C.J. Taxation § 775.

84-417. (2011) Consigned property. All personal property consigned for sale to any person within this state from any place out of the state must be assessed as other property.

History: En. Sec. 21, p. 82, L. 1891; re-en. Sec. 3709, Pol. C. 1895; re-en. Sec. 2519, Rev. C. 1907; re-en. Sec. 2011, R. C. M. 1921. Cal. Pol. C. Sec. 3638.

References

State ex rel. Rankin v. Harrington, 68

M 1, 28, 217 P 681; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation—85.

61 C.J. Taxation § 194.

84-418. (2012) Trustees, guardians, executors, etc. When a person is assessed as agent, trustee, bailee, guardian, executor, or administrator, his representative designation must be added to his name, and the assessment entered on a separate line from his individual assessment.

History: En. Sec. 22, p. 82, L. 1891; re-en. Sec. 3710, Pol. C. 1895; re-en. Sec. 2520, Rev. C. 1907; re-en. Sec. 2012, R. C. M. 1921. Cal. Pol. C. Sec. 3639.

References

State ex rel. Rankin v. Harrington, 68

M 1, 17, 28, 217 P 681; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation—414, 416.

61 C.J. Taxation §§ 868-872.

84-419. (2013) Property of a firm or corporation—where assessed. The property of every firm and corporation must be assessed in the county where the property is situate, and must be assessed in the name of the firm or corporation.

History: En. Sec. 23, p. 82, L. 1891; re-en. Sec. 3711, Pol. C. 1895; re-en. Sec. 2521, Rev. C. 1907; re-en. Sec. 2013, R. C. M. 1921. Cal. Pol. C. Sec. 3641.

Cross-Reference

Fraternal benefit societies, taxation, sec. 40-2133.

Operation and Effect

The provisions of this section apply equally to all kinds of property. Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Small, 35 M 288, 293, 88 P 953.

Personal property, particularly that of an intangible character, such as credits

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Repealed
L. '51, c. 34
Sec. 1, p. 53

represented by notes and mortgages, has its situs only at the domicile of the owner for purposes of taxation. *Gallatin County v. Beattie*, 3 M 173, 174; *Holland v. Commissioners*, 15 M 460, 461, 462, 39 P 575; *Monidah Trust v. Sheehan*, 45 M 424, 431, 123 P 692.

References

State ex rel. *Rankin v. Harrington*, 68 M 1, 17 et seq., 217 P 681; *Fergus Motor Co. v. Sorensen*, 73 M 122, 136, 235 P 422.

Taxation ⇨ 276, 418.

61 C.J. Taxation §§ 651 et seq., 660-1, 666-7, 669-671.

51 Am. Jur. 712, Taxation, §§ 793 et seq.

84-420. (2014) Undistributed property of deceased persons. The undistributed or unpartitioned property of deceased persons may be assessed to the heirs, guardians, executors, or administrators, and a payment of taxes made by either binds all the parties in interest for their equal proportions.

History: En. Sec. 24, p. 82, L. 1891; re-en. Sec. 3712, Pol. C. 1895; re-en. Sec. 2522, Rev. C. 1907; re-en. Sec. 2014, R. C. M. 1921. Cal. Pol. C. Sec. 3642.

Operation and Effect

An assessment to the "estate" of a deceased person is tantamount to an assessment to his heirs, guardians of his heirs, executors of his will or administrators of his estate, as the case may be, if they have actual notice of it, since the purpose of this section is to assure that

notice to some interested person shall be given and to provide that payment, when made, shall bind all parties in interest. *Hill v. County of Lewis and Clark*, 54 M 479, 483, 171 P 929.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation ⇨ 84.

61 C.J. Taxation § 191 et seq.

51 Am. Jur. 646, Taxation, §§ 693-695.

84-421. (2015) Capital stock and franchises of corporations—where assessed. The capital stock and franchises of corporations and persons, except as otherwise provided, must be listed and taxed in the county, town, or district where the principal office or place of business of such corporation or person is located; if there be no principal office or place of business in the state, then at the place in the state where any such corporation or person transacts business.

History: En. Sec. 3713, Pol. C. 1895; re-en. Sec. 2523, Rev. C. 1907; re-en. Sec. 2015, R. C. M. 1921.

Operation and Effect

Shares of stock, if within the state, whether belonging to residents or non-residents are proper subject for taxation. *State ex rel. Rankin v. Harrington*, 68 M 1, 17 et seq., 217 P 681.

Id. Shares of stock in corporations are deemed intangible property taxable at the residence of their owner, except where there is such a combination of circumstances as produce what is referred to in

the books as a business situs as distinguished from the domicile of their owner.

References

Montana Nat. Bank v. Yellowstone County, 78 M 62, 84, 252 P 876; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *Bank of Miles City v. Custer County*, 93 M 291, 302, 19 P 2d 885.

Taxation ⇨ 276, 278.

61 C.J. Taxation §§ 651 et seq., 655, 660-1, 666-7, 669-671.

51 Am. Jur. 737, Taxation, §§ 822 et seq.

84-422. (2016) Personal property of merchant or manufacturer. The personal property belonging to the business of a merchant or of a manufacturer must be listed in the town or district where his business is carried on.

History: En. Sec. 25, p. 83, L. 1891; re-en. Sec. 3714, Pol. C. 1895; re-en. Sec. 2524, Rev. C. 1907; re-en. Sec. 2016, R. C. M. 1921.

References

Cited or applied as section 3714, polit-

ical code, in *Flowerree Cattle Co. v. Lewis and Clark County*, 33 M 32, 35, 81 P 398; *Coburn Cattle Co. v. Small*, 35 M 288, 293, 88 P 953; *State ex rel. Rankin v. Harrington*, 68 M 1, 17 et seq., 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071.

Taxation⌚263.

61 C.J. Taxation § 637.

84-423. (2017) Property of express and stage companies, etc. The personal property of express, transportation, and stage companies, steamboats, vessels, and other water-craft must be listed and assessed in the county, town, or district where such property is usually kept.

History: En. Sec. 26, p. 83, L. 1891; re-en. Sec. 3715, Pol. C. 1895; re-en. Sec. 2525, Rev. C. 1907; re-en. Sec. 2017, R. C. M. 1921.

Operation and Effect

All of the tangible property of an express company is liable to taxation. *Wells Fargo & Co. v. Harrington*, 54 M 235, 244, 169 P 463.

References

Cited or applied as section 3715, polit-

ical code, in *Flowerree Cattle Co. v. Lewis and Clark County*, 33 M 32, 35, 81 P 398; *Coburn Cattle Co. v. Small*, 35 M 288, 294, 88 P 953; as section 26, Laws of 1891, in *Wells Fargo Co. v. Harrington*, 54 M 235, 240, 169 P 463; State ex rel. Rankin v. *Harrington*, 68 M 1, 17 et seq., 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071.

Taxation⌚260, 262.

61 C.J. Taxation § 662 et seq.

21 Am. Jur. 787, Taxation, § 883.

84-424. (2018) Gas and water companies. The personal property and franchises of gas and water companies must be listed and assessed in the county, town, or district where the principal works are located.

History: En. Sec. 27, p. 83, L. 1891; re-en. Sec. 3716, Pol. C. 1895; re-en. Sec. 2526, Rev. C. 1907; re-en. Sec. 2018, R. C. M. 1921.

Operation and Effect

A water right owned by a water company was properly assessed in a school district where its place of business and principal works were located, and into the limits of which water was conveyed by pipe-lines for distribution to the inhabitants. *Helena Water Works Co. v. Settles*, 37 M 237, 240, 95 P 838.

References

Cited or applied as section 3716, political code, in *Flowerree Cattle Co. v. Lewis and Clark County*, 33 M 32, 35, 81 P 398; *Coburn Cattle Co. v. Smith*, 35 M 288, 294, 88 P 953; as section 27, laws of 1891, in *Wells Fargo & Co. v. Harrington*, 54 M 235, 169 P 463; State ex rel. Rankin v. *Harrington*, 68 M 1, 21, 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071.

Taxation⌚276.

61 C.J. Taxation §§ 670, 671.

51 Am. Jur. 823, Taxation, §§ 935 et seq.

84-425. (2019) Gas and water mains. Gas and water mains and pipes laid in roads, streets, or alleys are personal property.

History: En. Sec. 28, p. 83, L. 1891; amd. Sec. 3717, Pol. C. 1895; re-en. Sec. 2527, Rev. C. 1907; re-en. Sec. 2019, R. C. M. 1921.

References

State ex rel. Rankin v. *Harrington*, 68

M 1, 21, 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071.

Taxation⌚67.

61 C.J. Taxation § 154 et seq.

84-426. (2020) Street railroads, bridges and ferries. Street railroads and bridges, and ferries, and their franchises, owned by persons or corporations, must be listed and assessed in the county, town, or district where such property or any portion thereof is located, and the track of the railroad and the bridge are personal property.

History: En. Sec. 29, p. 83, L. 1891; re-en. Sec. 3718, Pol. C. 1895; re-en. Sec. 2528, Rev. C. 1907; re-en. Sec. 2020, R. C. M. 1921.

Operation and Effect

The frequent use of the prefix "street"

in statutes similar to this and the following section indicates the intention of the legislature to maintain the distinction between "railroads" and "street railroads," and suggests that in construing enactments touching railroads they should not be held to apply to street railroads unless the in-

tention that they shall so apply is apparent. *Helena etc. Ry. Co. v. City of Helena*, 47 M 18, 34, 130 P 446.

Held, under this section, that the constituent parts of a street railway track are personal property and taxable as such under the classification act, falling within class 7, at forty per cent of its true and full value as property not included in the preceding six classes. *Butte Electric Ry. Co. v. Brett*, 80 M 12, 16, 257 P 478.

84-427. (2021) Assessment of railroads, telegraph, telephone and electric light lines. Railroads operated or situated in one county and not assessed by the state board of equalization, telegraph, telephone, and electric light lines and similar properties situated in one county, and their franchises; canals, ditches, and flumes, situated in one county and the franchises of the same, must be listed and assessed in the county in which such property is located, and the assessor must require the owner of such property, or his agent, or any officer of a corporation owning the same, to make a verified statement containing a list of the number of miles such property is operated or situated in the county, and the value thereof.

History: En. Sec. 30, p. 83, L. 1891; re-en. Sec. 3719, Pol. C. 1895; re-en. Sec. 2529, Rev. C. 1907; amd. Sec. 1, Ch. 24, L. 1921; re-en. Sec. 2021, R. C. M. 1921.

Operation and Effect

So much of a telegraph line used exclusively for railroad purposes, extending along a right of way across the state, as is within any given county, is assessable by the assessor of that county, and not by the state board of equalization as part of the "roadway." *Northern Pac. Ry. Co. v. Brogan*, 52 M 461, 469, 158 P 820.

84-428. (2022) Railroads—how assessed. The franchise, roadway, roadbed, rails, and rolling-stock of all railroads operated in more than one county in this state must be assessed by the state board of equalization as hereinafter provided. Other franchises, if granted by the authorities of a county or city, must be assessed in the county or city within which they were granted; if granted by any other authority, they must be assessed in the county in which the corporations, firms, or persons owning or holding them have their principal place of business.

History: En. Sec. 11, p. 76, L. 1891; re-en. Sec. 3696, Pol. C. 1895; re-en. Sec. 2508, Rev. C. 1907; re-en. Sec. 2022, R. C. M. 1921. Cal. Pol. C. Sec. 3628.

Operation and Effect

So much of a telegraph line used exclusively for railroad purposes, and extending along the right of way across the state, as is within any given county, is assessable by its assessor, and not by the

References

Cited or applied as section 2528, revised codes, in *Northern Pac. Ry. Co. v. Brogan*, 52 M 461, 469, 158 P 820; as section 29, laws of 1891, in *Wells Fargo & Co. v. Harrington*, 54 M 235, 240, 169 P 463; *State ex rel. Rankin v. Harrington*, 68 M 1, 21, 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071.

Taxation 260, 276, 284.

61 C.J. Taxation §§ 667, 668.

51 Am. Jur., Taxation, p. 788, § 884; p. 790, § 887 et seq.

References

Cited or applied as section 2529, revised codes, in *Helena etc. Ry. Co. v. City of Helena*, 47 M 18, 34, 130 P 446; *Wells Fargo & Co. v. Harrington*, 54 M 235, 240, 169 P 463; *State ex rel. Rankin v. Harrington*, 68 M 1, 18, 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071.

Taxation 260, 284.

61 C.J. Taxation §§ 270, 662 et seq., 669.

51 Am. Jur., Taxation, p. 790, §§ 887 et seq.; p. 803, §§ 906 et seq.

state board of equalization as part of the "roadway." *Northern Pac. Ry. Co. v. Brogan*, 52 M 461, 469, 158 P 820.

See *Clark v. Maher*, 34 M 391, 399, 87 P 272, for a discussion of this section prior to its amendment.

Snowsheds constructed of reinforced concrete and steel, with timber roofs, the walls of which on the mountain-side of the track were embedded in the ground four feet or more, the outer walls consist-

ing of a series of piers grounded in holes from a foot to twelve feet deep, held part of defendant railway company's road-bed, and as such assessable, under section 16, article XII, constitution, by the state board of equalization and not by the county assessor. *Great Northern Ry. Co. v. Flathead Co.*, 61 M 263, 267, 202 P 198.

Id. Cooking utensils forming a necessary and usual equipment of cars used for boarding railway construction crews are part of its rolling stock and as such subject to assessment for taxation by the state board of equalization only.

References

Cited or applied as section 2508, revised

codes, in *Northern Pac. Ry. Co. v. County of Musselshell et al.*, 54 M 96, 169 P 53; as section 11, laws of 1891, in *Wells Fargo & Co. v. Harrington*, 54 M 235, 240, 169 P 463; *State ex rel. Rankin v. Harrington*, 68 M 1, 18, 217 P 681; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071.

Taxation—317.

61 C.J. Taxation § 734 et seq.

51 Am. Jur. 790, Taxation, §§ 887 et seq.

What property is within provision in relation to local taxation of certain railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board. 80 ALR 252.

84-429. (2023) Land—how assessed. All other taxable property must be assessed in the county, city, or district in which it is situated. Land must be assessed in parcels or subdivisions not exceeding six hundred and forty acres, and tracts of land containing more than six hundred and forty acres, which have been sectionized by the United States government, must be assessed by sections or fractions of sections.

The assessor must set aside one line in the assessment book for the description of each six hundred and forty acres of land, or less, the number of acres to be entered in one column, the description in another column, value in another column, value of improvements in another column, and the total in the total column. He must also set aside a line in the assessment book for the description of each town or city lot, the description to be entered in one column, the value in another column on the same line, the value of improvements in another column, and the total in the total column; provided, that all of the unimproved lots of the same value, situate in one block, or belonging to the same party, may be described and assessed in one line in the manner above provided for each lot. It is the intention hereby that each parcel and lot show in its own line, and opposite the description thereof, the separate value of the same and the value of the improvements thereon.

History: En. Sec. 12, p. 77, L. 1891; re-en. Sec. 3697, Pol. C. 1895; re-en. Sec. 2509, Rev. C. 1907; re-en. Sec. 2023, R. C. M. 1921. Cal. Pol. C. Sec. 3628.

Cross-Reference

Improvements on state lands, how assessed, sec. 81-928.

References

Cited or applied as section 3697, political code, in *Flowerree Cattle Co. v. Lewis and Clark County*, 33 M 32, 35, 81 P 398; *Coburn Cattle Co. v. Small*, 35 M 288, 293, 88 P 953; cited in part as section 12, laws

of 1891, p. 73, in *Northern Pac. Ry. Co. v. Brogan*, 52 M 461, 464, 158 P 820; *State ex rel. Rankin v. Harrington*, 68 M 1, 18, 217 P 681; *State ex rel. Northern P. Ry. Co. v. Duncan*, 68 M 420, 423 et seq., 219 P 638; *State ex rel. Schoonover v. Stewart*, 89 M 257, 271, 297 P 476; *Rosebud County v. Smith et al.*, 92 M 75, 80, 9 P 2d 1071; *State ex rel. Tillman v. District Court*, 101 M 176, 182, 53 P 2d 107.

Taxation—255, 260, 421(1-9).

61 C.J. Taxation §§ 631, 635, 885, 886.

51 Am. Jur. 652, Taxation, §§ 701 et seq.

84-430. (2024) Uniform classification of lands for taxation. It is hereby made the duty of the state board of equalization to provide for a general and uniform method of classifying lands, for the purposes for which they

*Repealed
1/1/2024*

may be valuable, in the state of Montana for the purpose of securing an equitable and uniform basis of assessment of said lands for taxable purposes.

History: Ch. 89, Laws of 1919, was an earlier act. This section en. Sec. 1, Ch. 239, L. 1921; re-en. Sec. 2024, R. C. M. 1921.

Operation and Effect

The object of sections 84-430 to 84-437 requiring a uniform classification of lands for taxation purposes is to determine their relative values; a grouping of lands according to the uses for which they are valuable; whatever their character, they must be separately assessed on a uniform basis, i.e., their full cash value; the intent

of the statute is to place lands of the same general character in the same class, not to place the same value upon all lands in the same class. State ex rel. Schoonover v. Stewart, 89 M 257, 270, 297 P 476.

References

State ex rel. Federal Land Bk. v. Hays, 86 M 58, 68, 282 P 32; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation 410.

61 C.J. Taxation § 865.

51 Am. Jur. 201, Taxation, §§ 150 et seq.

84-431. (2025) Duty of county commissioners to provide for classification. It is hereby made the duty of the board of county commissioners of the several counties of the state of Montana to provide, in such manner as they may determine, for the classification of all lands, except vacant lands in forest reserves, Indian reservations and unsurveyed lands, within their respective counties, which classification must be made and a record thereof kept upon such maps and plats, and entered in such books of record, as may be prescribed by the state board of equalization. Such maps and plats and books of record shall be official records of the county. A certified copy of all such records as may be desired shall be furnished to the state board of equalization and the state board of equalization shall provide for the payment to the several counties the cost of preparing such copy of the records so provided for, as they may require.

History: En. Sec. 2, Ch. 239, L. 1921; re-en. Sec. 2025, R. C. M. 1921.

References

State ex rel. Federal Land Bk. v. Hays,

86 M 58, 68, 282 P 32; State ex rel. Schoonover v. Stewart, 89 M 257, 270, 297 P 476; Rosebud County v. Smith et al., 92 M 75, 9 P 2d 1071.

84-432. (2026) Basis of classification. All lands shall be classified into:

1. Agricultural lands.
2. Irrigated or non-irrigated lands.
3. Grazing lands.
4. Timber lands and stump lands.
5. Lands bearing stone, coal, or valuable deposits.
6. Lands bearing natural gas, petroleum, or other mineral deposits.
7. Lands which may be valuable for more than one purpose shall be so classified. All lands shall be classified in accordance with the legal subdivision thereof.

The state board of equalization may provide for such other and additional subdivisions of classification herein enumerated as they may deem proper.

History: En. Sec. 3, Ch. 239, L. 1921; re-en. Sec. 2026, R. C. M. 1921.

References

State ex rel. Northern P. Ry. Co. v. Duncan, 68 M 420, 424, 219 P 638; State

ex rel. Federal Land Bk. v. Hays, 86 M 58, 68, 282 P 32; State ex rel. Schoonover v. Stewart, 89 M 257, 270, 297 P 476; Rosebud County v. Smith et al., 92 M 75, 9 P 2d 1071.

84-433. (2027) Classification fund—warrants—payment of existing contracts. (1) The board of county commissioners shall create and establish a fund to be known as the "Classification Fund." All warrants drawn in payment of work and labor performed, in the payment of service rendered under any contract for the classification of land in any county shall be drawn on the classification fund. The board of county commissioners of any county which has heretofore procured the performance of any work or labor or the rendering of any services in the classification of land in the county for taxation or assessment purposes, or incurred any expenses pursuant to the provisions of chapter 89 of the laws of the sixteenth legislative assembly, and have not compensated the person or persons for such work, labor or services, or paid such expenses incurred, are hereby authorized and empowered, and it is hereby made the legal duty of such board, to pay such person or persons for such work, labor or services, and such expenses incurred out of the classification fund of said county.

(2) Any and all contracts heretofore entered into by the boards of county commissioners of the various counties for the classification of lands under chapter 89 of the laws of the sixteenth session of the legislative assembly of Montana are hereby declared to be validated and in full force and effect, and it is hereby made the duty of the various boards of county commissioners where contracts for said classification are partially performed to complete the same according to the terms of said contracts; provided, however, that the said boards of county commissioners may make such supplemental contracts as they deem necessary for the purpose of carrying out the terms of this act.

(3) Whenever at any time before the completion of any contract for classification under the terms of this act or of chapter 89 of the laws of the sixteenth legislative assembly of the state of Montana, a new county is formed, containing any portion of the county included in said contract, such new county shall assume the uncompleted portion of said contract, so far as it applies to the territory within said new county, and such portion of said contracts shall be an obligation of said new county in the same manner as if said contract had been originally entered into by said county; and whenever, before the completion of any contract as above described, a portion of one county is taken from said county and added to another county, such county to which said territory is added shall assume the uncompleted portion of said contract so far as it applies to the territory transferred and such portion of said contract shall be an obligation of said enlarged county in the same manner as if said contract had been originally entered into by said county to which such territory is transferred.

History: En. Sec. 4, Ch. 239, L. 1921; M 257, 270, 297 P 476; Rosebud County re-en. Sec. 2027, R. C. M. 1921. v. Smith et al., 92 M 75, 9 P 2d 1071.

References

States ex rel. Schoonover v. Stewart, 89

Counties 161; Taxation 338.
20 C.J.S. Counties § 231; 61 C.J. Taxation § 776 et seq.

84-434. (2028) Tax levy for classification fund. The board of county commissioners of each county shall levy annually a tax not to exceed one

mill upon all of the properties situate in said county subject to taxation, which shall be levied and collected in the same manner as other taxes.

All moneys collected in pursuance of the aforesaid levy shall be by the county treasurer deposited to the credit of the "classification fund" and shall not be used for any purpose other than as herein provided. Whenever the classification of all lands in any county shall have been completed and all warrants drawn upon the classification fund shall have been paid, the special levy herein provided shall cease and shall not be made by the board of county commissioners.

History: En. Sec. 5, Ch. 239, L. 1921; M 257, 270, 297 P 476; Rosebud County re-en. Sec. 2028, R. C. M. 1921. v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

References

State ex rel. Schoonover v. Stewart, 89

Counties 192.

20 C.J.S. Counties § 281.

84-435. (2029) Accuracy and use of classification. The classification herein provided shall be full, complete and accurate, and shall be used as the basis upon which land values shall be fixed for purpose of assessment and taxation.

History: En. Sec. 6, Ch. 239, L. 1921; re-en. Sec. 2029, R. C. M. 1921.

References

State ex rel. Schoonover v. Stewart, 89 M 257, 270, 297 P 476; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

84-436. (2030) Assessment of lands for taxation. It shall be the duty of the county assessor to assess all lands for taxation purposes in accordance with the classification, as made by the board of county commissioners.

History: En. Sec. 7, Ch. 239, L. 1921; re-en. Sec. 2030, R. C. M. 1921.

References

State ex rel. Schoonover v. Stewart, 89 M 257, 270, 297 P 476; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

84-437. (2031) Notice of classification to land owners. It shall be the duty of the board of county commissioners to cause to be mailed by registered mail, return card requested, to each owner a notice of the classification of the land owned by him. If the owner of any land is dissatisfied with the classification of his land, the board of county commissioners shall make such investigation as they deem necessary to determine the true and correct classification of such land and when so determined, the same shall be classified in the manner ordered by the board of commissioners.

History: En. Sec. 8, Ch. 239, L. 1921; re-en. Sec. 2031, R. C. M. 1921.

M 257, 270, 297 P 476; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

References

State ex rel. Schoonover v. Stewart, 89

Taxation 363.

61 C.J. Taxation § 812.

84-438. (2032) Property and money in litigation. Money and property in litigation in possession of a county treasurer, or of a court or a clerk thereof, or receiver, must be assessed to such treasurer, clerk, or receiver, and the taxes paid thereon under the direction of the court.

History: En. Sec. 32, p. 84, L. 1891; re-en. Sec. 3721, Pol. C. 1895; re-en. Sec. 2540, Rev. C. 1907; re-en. Sec. 2032, R. C. M. 1921. Cal. Pol. C. Sec. 3647.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation 87.

61 C.J. Taxation § 195 et seq.

84-439. (2033) Property concealed, misrepresented, etc. Any property wilfully concealed, removed, transferred, or misrepresented by the owner or agent thereof to evade taxation, upon discovery, must be assessed at not exceeding ten times its value, and the assessment so made must not be reduced by the board of county commissioners.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3722, Pol. C. 1895; re-en. Sec. 2541, Rev. C. 1907; re-en. Sec. 2033, R. C. M. 1921. Cal. Pol. C. Sec. 3648.

References

Rosebud County v. Smith et al., 92 M 75, 9 P 2d 1071.

Taxation \hookrightarrow 353.

61 C.J. Taxation § 809.

51 Am. Jur. 676, Taxation, §§ 734-736.

84-440. (2034) Property having escaped assessment. Any property discovered by the assessor to have escaped assessment may be assessed at any time, if such property is in the ownership or under the control of the same person who owned or controlled it at the time it should have been assessed.

History: Ap. p. Sec. 33, p. 84, L. 1891; amd. Sec. 3723, Pol. C. 1895; re-en. Sec. 2542, Rev. C. 1907; re-en. Sec. 2034, R. C. M. 1921. Cal. Pol. C. Sec. 3649.

Operation and Effect

Where, after the assessment-roll had passed out of the assessor's hands and the county board of equalization had adjourned, that officer discovered, listed for assessment, and assessed under the authority of this section, personal property belonging to the undistributed estate of a deceased person, the fact that the executors in charge of it were thus deprived of a right to appeal to the board of equalization did not invalidate the additional assessment, since the property was taxable, and appeal to the board is available, not to him who has concealed prop-

erty, but who has delivered to the assessor a sworn statement of all his taxable property. Hill et al. v. County of Lewis and Clark, 54 M 479, 171 P 929.

References

Butte & Superior Min. Co. v. McIntyre, 71 M 254, 262, 229 P 730; Simpson v. Silver Bow County, 87 M 83, 93, 285 P 195; Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071; Ford Motor Co. v. Linnane et al., 102 M 325, 334, 57 P 2d 803.

Taxation \hookrightarrow 362.

61 C.J. Taxation § 809.

When statute of limitation commences to run against action to recover taxes on property withheld or omitted from tax list. 131 ALR 822.

84-441. (2035) Supplemental assessment. When any personal property liable to taxation is brought into a county at any time after the second Monday of July, and such property has not been assessed for that year, it must be listed and assessed the same as if it had been in the county at the time of the regular assessment, and the tax must be collected by the assessor, as provided in this code, at any time.

History: En. Sec. 4022, Pol. C. 1895; re-en. Sec. 2740, Rev. C. 1907; re-en. Sec. 2035, R. C. M. 1921.

Property Affected

Held, that this section applies to property which was not, but should have been, assessed as of the first Monday of March

of the current year, not to property which was not in the state on that date. Ford Motor Co. v. Linnane, 102 M 325, 334, 57 P 2d 803.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

84-442. (2036) Assessment not illegal for informality or delay. No assessment or act relating to assessment or collection of taxes is illegal on account of informality, nor because the same was not completed within the time required by law.

History: En. Sec. 4014, Pol. C. 1895; re-en. Sec. 2732, Rev. C. 1907; re-en. Sec. 2036, R. C. M. 1921. Cal. Pol. C. Sec. 3885.

Operation and Effect

The listing of land in the name of a person other than the owner is but an irregularity or informality which, of itself, does not avoid the assessment or render the tax illegal or unauthorized. Cobban v. Hinds, 23 M 338, 349, 59 P 1.

An increase in an assessment by the assessor in obedience to a void order of the board of equalization cannot be sustained under this section or section 84-409, ante. Western Ranches v. Custer County, 28 M 278, 283, 72 P 659.

We hold the notice did not comply with the statute. Therefore, it was void, and, in law, no notice at all. No legal notice having been given, the sale was void. True, this section says: "No assessment or act relating to assessment or collection of taxes is illegal on account of informality." However, this departure from legal requirement is not an informality. It is a matter of

substance and is vital. Perham v. Putnam et al., 82 M 349, 267 P 305.

The fact that real property, title to which was claimed by adverse possession, had been at all times assessed to the record owner, the taxes, however, being paid by the adverse claimant during the entire ten-year period, did not affect the right of the latter, in view of section 84-406, declaring that a mistake in the name of the owner does not render the assessment invalid, and this section, to the effect that no assessment or collection of taxes is illegal on account of informality. Anderson v. Mace et al., 99 M 421, 430, 45 P 2d 771.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071; County of Musselshell v. Morris Dev. Co., 92 M 201, 210, 11 P 2d 774.

Taxation⊕318, 319(2), 440.

61 C.J. Taxation §§ 746, 761, 907, 912.

84-443. (2037) Deputies for assessors. The board of county commissioners may allow the assessor such a number of deputies to be appointed by him as will, in the judgment of the board, enable the assessor to complete the assessment within the time prescribed by law.

History: En. Sec. 4012, Pol. C. 1895; re-en. Sec. 2736, Rev. C. 1907; re-en. Sec. 2037, R. C. M. 1921; amd. Sec. 1, Ch. 135, L. 1929.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation⊕315.

61 C.J. Taxation § 714.

84-444. (2038) Traveling expenses of assessors and deputies. The assessor in each county in this state shall be paid the actual and necessary traveling expenses, not exceeding two hundred dollars (\$200.00) in any one year, and his deputies shall be paid the actual and necessary traveling expenses not exceeding fifty dollars (\$50.00) each, in any one month, during the months of March, April, May and June, incurred while in the performance of official duty, upon presenting and filing verified claims therefor, supported by vouchers for each item of expense to the board of county commissioners of their respective county; provided, that in counties in which the county assessor has no deputy or deputies, that he shall be paid the actual and necessary traveling expenses by him incurred, not to exceed one hundred dollars (\$100.00) in any one month, during the months of March, April, May, and June of each year while in the performance of official duty, upon presenting and filing verified claims therefor, supported by vouchers for each item of expense, to the board of county commissioners of his county.

History: En. Sec. 1, Ch. 44, L. 1909; re-en. Sec. 2038, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1925; amd. Sec. 1, Ch. 56, L. 1935; amd. Sec. 1, Ch. 14, L. 1943.

References

Rosebud County v. Smith et al., 92 M

Taxation⊕316.

61 C.J. Taxation § 743 et seq.

84-445. (2039) Assessors liable for unassessed property. The assessor and his sureties are liable on his official bond for all taxes on property within the county which, through his wilful failure or neglect, is unassessed.

History: En. Sec. 40, p. 87, L. 1891; re-en. Sec. 3734, Pol. C. 1895; re-en. Sec. 2553, Rev. C. 1907; re-en. Sec. 2039, R. C. M. 1921. Cal. Pol. C. Sec. 3660.

Operation and Effect

Under section 93-3203 and the rule that a separate liability of the principal cannot be joined in an action on the bond against the surety, held that an action by a county against its assessor to recover from him money lost to it by reason of his willful failure and neglect to assess

property, was improperly joined with an action against a surety company on the official bond of that officer. County of Silver Bow v. Kelly et al., 68 M 194, 197, 216 P 1106.

References

Rosebud County v. Smith et al., 92 M 75, 80, 9 P 2d 1071.

Taxation↔324.

61 C.J. Taxation § 747 et seq.

84-446. (2040) County attorney must prosecute. The county attorney must, after the assessor completes the assessment book for the year, commence an action on the assessor's bond for the amount of taxes lost from such wilful failure or neglect.

History: En. Sec. 41, p. 87, L. 1891; re-en. Sec. 3735, Pol. C. 1895; re-en. Sec. 2554, Rev. C. 1907; re-en. Sec. 2040, R. C. M. 1921. Cal. Pol. C. Sec. 3661.

84-447. (2041) Judgment—when entered against assessor. On the trial of such action, the value of the property unassessed being shown, judgment for the amount of taxes that should have been collected thereon must be entered.

History: En. Sec. 42, p. 87, L. 1891; re-en. Sec. 3736, Pol. C. 1895; re-en. Sec. 2555, Rev. C. 1907; re-en. Sec. 2041, R. C. M. 1921. Cal. Pol. C. Sec. 3662.

84-448. (2042) Annual settlements. Every assessor, county attorney and county treasurer must annually, on the first Monday of January, make a settlement with the county clerk of all transactions connected with the revenue for the previous year, and every county treasurer, on the expiration of his office, must make such settlement.

History: En. Sec. 199, p. 128, L. 1891; re-en. Sec. 4016, Pol. C. 1895; re-en. Sec. 2734, Rev. C. 1907; re-en. Sec. 2042, R. C. M. 1921.

Counties↔94(4); District and Prosecuting Attorneys↔7(1); Taxation↔319(1). 20 C.J.S. Counties §§ 150, 152; 27 C.J.S. District and Prosecuting Attorneys § 12; 61 C.J. Taxation § 728 et seq.

84-449. (2043) County assessor to collect farm statistics. It shall be the duty of each county assessor and his deputies, at the time of making the annual assessment of property to collect such statistics in relation to farm products and agricultural resources from each farm owner, operator or renter as shall be called for by the commissioner of agriculture and on blanks to be prepared and furnished by the commissioner of agriculture.

History: En. Sec. 1, Ch. 187, L. 1921; re-en. Sec. 2043, R. C. M. 1921.

Taxation↔319(1).

61 C.J. Taxation § 728 et seq.

84-450. (2044) Delivery to commissioner of agriculture. The original blanks upon which the statistics are gathered by the county assessor and his deputies shall be returned by them to the commissioner of agriculture immediately on completion of his assessment work and not later than July first each year.

History: En. Sec. 2, Ch. 187, L. 1921; re-en. Sec. 2044, R. C. M. 1921.

84-451. (2045) Statistics, how obtained. If for any reason the county assessor or his deputy is unable to obtain the statistics from any farm owner, operator or renter, he shall obtain them from the most reliable source, so that the returns may be complete.

History: En. Sec. 3, Ch. 187, L. 1921;
re-en. Sec. 2045, R. C. M. 1921.

84-452. (2046) Penalty for refusal to furnish statistics. Any farm owner, operator, or renter refusing to furnish the information called for in section 84-449, or wilfully furnishes fraudulent information to any county assessor or his deputy, upon proper request therefor, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not less than ten dollars, nor more than one hundred dollars, and cost of prosecution.

History: En. Sec. 4, Ch. 187, L. 1921; Taxation \S 325.
re-en. Sec. 2046, R. C. M. 1921. 61 C.J. Taxation \S 756.

84-453. (2047) Penalty for neglect of act by officer. Any county assessor or deputy county assessor who shall wilfully neglect or refuse in whole or in part to perform the duties required in this act, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined a sum of not less than twenty dollars, nor more than two hundred dollars, and the cost of prosecution.

History: En. Sec. 5, Ch. 187, L. 1921;
re-en. Sec. 2047, R. C. M. 1921.

CHAPTER 5

ASSESSMENT BOOK—FORM—CONTENTS—DISPOSAL

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84-501. (2048) Property—how listed. The assessor must prepare an assessment book with appropriate headings, alphabetically arranged, unless otherwise directed by the state board of equalization, in which must be listed all property within the county, and in which must be specified in separate columns, under the appropriate head:

1. The name of the person to whom the property is assessed.
2. Land, by township, range, section, or fractional section; and when such land is not a United States land division or subdivision, by metes and

bounds, or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract six hundred and forty acres, locality, and the improvements thereon.

3. City and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and improvements thereon.

4. All personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment.

5. The cash value of real estate, other than city or town lots.

6. The cash value of improvements on such real estate.

7. The cash value of city and town lots.

8. The cash value of improvements on city and town lots.

9. The cash value of improvements on real estate assessed to persons other than the owners of the real estate.

10. The cash value of all personal property, exclusive of money.

11. The amount of money.

12. Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation must, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, must be assessed against the exempt land, nor under any circumstances must the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.

13. The school, road, and other revenue districts in which each piece of property assessed is situated.

14. The total value of all property.

15. The figure one (1), in separate columns, opposite the name of every person liable to pay a poll tax.

16. Such other things as the state board of equalization may require.

History: En. Sec. 34, p. 84, L. 1891; re-en. Sec. 3724, Pol. C. 1895; re-en. Sec. 2543, Rev. C. 1907; re-en. Sec. 2048, R. C. M. 1921. Cal. Pol. C. Sec. 3650.

Operation and Effect

An assessor must list all property in his county in an assessment book under appropriate headings. State ex rel. Fadness v. Eie, 53 M 138, 146, 162 P 164.

References

Cited or applied as section 3724, political code, in Hilburn v. St. Paul etc. Ry. Co., 23 M 229, 242, 58 P 551; Danforth v. Livingston, 23 M 558, 562, 59 P 916; Belknap Realty Co. v. Simieo et al., 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 381, 283 P 758.

Taxation 408 et seq.

61 C.J. Taxation § 864 et seq.

51 Am. Jur. 633, Taxation, §§ 673 et seq.

84-502. (2049) Form of assessment book. The form of the assessment book must be as directed by the state board of equalization, and in those counties for which said board does not prescribe a different form it must be substantially as follows:

Assessment book of the property of county, for the year 19....., assessed to the owner, when known, and if not known, to unknown owner.

Remarks		
Poll-tax		
Total tax		
Total value of all property after equalization by the state board of equalization		
Total value of all property for taxation		
Deductions on account of debts due		
Total value of all property		
Amount of money		
Value of personal property		
Value of improvements on real estate assessed to persons other than the owners of the real estate. Value of improvements thereon		
Value of city and town lots		
Value of improvements thereon		
Value of real estate other than city and town lots		
Number of mines, value of same and net proceeds		
School, road, or other district in which located		
Number of acres		
Description of Property	Real estate City or other than city and town lots.	Block
		Lot
		Fraction
		Range E. or W.
		Township N. or S.
		Section
		Subdivision of section
Residence		
Taxpayers' names		
When tax paid		

Personal property.
(Here items may
be enumerated).

History: En. Sec. 3725, Pol. C. 1895; re-en. Sec. 2544, Rev. C. 1907; re-en. Sec. 2049, R. C. M. 1921.

Operation and Effect

The assessment book must be so kept that it will appear therefrom what prop-

erty is within the limits of cities or towns, and what is elsewhere. State ex rel. City of Butte v. Weston, 29 M 125, 129, 74 P 415.

Taxation 412.

61 C.J. Taxation § 866 et seq.

84-503. (2050) Assessment book, when to be completed—affidavit. On or before the second Monday in July, in each year, the assessor must complete his assessment book. He must take and subscribe an affidavit, in the assessment book, to be substantially as follows: "I,, assessor of county, do swear that between the first Monday in March and the second Monday in July, nineteen hundred and, I have made diligent inquiry and examination to ascertain all the property within the county, subject to assessment by me, and that the same has been assessed on the assessment book, equally and uniformly, according to the best of my

judgment, information, and belief, at its full cash value; and that I have faithfully complied with all the duties imposed on the assessor under the revenue laws; and that I have not imposed any unjust or double assessment through malice or ill will or otherwise; nor allowed any one to escape a just and equal assessment through favor, or reward, or otherwise." But the failure to take or subscribe such an affidavit, or any affidavit, will not in any manner affect the validity of the assessment.

History: Ap. p. Sec. 1697, 5th Div. Comp. Stat. 1887; amd. Sec. 19, p. 91, Ex. L. 1887; en. Sec. 36, p. 86, L. 1891; re-en. Sec. 3726, Pol. C. 1895; re-en. Sec. 2545, Rev. C. 1907; re-en. Sec. 2050, R. C. M. 1921. Cal. Pol. C. Sec. 3652.

Operation and Effect.

An assessor is required to have his assessment book completed on or before the second Monday of July. State ex rel. Fadness v. Eie, 53 M 138, 146, 147, 162 P 164.

References

Cited or applied as section 3726, political code, in State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415; State ex rel. Federal Land Bk. v. Hays, 86 M 58, 282 P 32.

Taxation—433.

61 C.J. Taxation § 902.

84-504. (2051) Map book. The assessor must, when directed so to do by the board of commissioners, in a map book make a plat of the various blocks within any incorporated city or town, and mark thereon, in each subdivision, the name of the person to whom it is assessed.

History: En. Sec. 3727, Pol. C. 1895; re-en. Sec. 2546, Rev. C. 1907; re-en. Sec. 2051, R. C. M. 1921.

Taxation—410.

61 C.J. Taxation § 865.

84-505. (2052) Assessment and map book delivered to and kept by clerk. As soon as completed, the assessment book, together with the map book and statements, must be delivered to the county clerk, who must immediately give notice thereof, and of the time the board of commissioners will meet to equalize assessments, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct; and in the meantime the assessment book must remain in his office for the inspection of all persons interested.

History: En. Sec. 37, p. 86, L. 1891; re-en. Sec. 3728, Pol. C. 1895; re-en. Sec. 2547, Rev. C. 1907; re-en. Sec. 2052, R. C. M. 1921. Cal. Pol. C. Sec. 3654.

lize assessments. State ex rel. Fadness v. Eie, 53 M 138, 146, 162 P 164.

References

Cited or applied as section 3728, political code, in State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

Operation and Effect

An assessor's assessment book, when completed, must be delivered to the county clerk, who must give notice of the fact by publication, and also that the board of commissioners will meet to equal-

Taxation—435.

61 C.J. Taxation § 908 et seq.

84-506. (2053) Statement by assessor to state board of equalization. On the second Monday in July in each year, the assessor of each county must transmit to the state board of equalization a statement, showing:

1. The several kinds of personal property.
2. The average and total value of each kind.
3. The number of livestock, number of bushels of grain, number of pounds, or tons, of any article sold by the pound or ton.
4. When practicable, the separate value of each class of land, specifying the classes and the number of acres in each.

History: En. Sec. 3729, Pol. C. 1895;
re-en. Sec. 2548, Rev. C. 1907; re-en. Sec.
2053, R. C. M. 1921. Cal. Pol. C. Sec. 3655.

Taxation 319(1).
61 C.J. Taxation § 728 et seq.

84-507. (2054) Penalty for failure of assessor to complete assessment book and transmit statement. Every assessor who fails to complete his assessment book, or who fails to transmit the statement mentioned in the preceding section to the state board of equalization, forfeits the sum of one thousand dollars to be recovered on his official bond, for the use of the county, or to be deducted from his salary by the board of county commissioners.

History: En. Sec. 3730, Pol. C. 1895;
re-en. Sec. 2549, Rev. C. 1907; re-en. Sec.
2054, R. C. M. 1921. Cal. Pol. C. Sec. 3656.

Taxation 324.
61 C.J. Taxation § 747 et seq.

84-508. (2055) Persons claiming ownership of land desiring to be assessed. Lands once described on the assessment book need not be described a second time, but any person claiming the same, and desiring to be assessed therefore, may have his name inserted with that of the person to whom such land is assessed.

History: En. Sec. 3731, Pol. C. 1895;
re-en. Sec. 2550, Rev. C. 1907; re-en. Sec.
2055, R. C. M. 1921. Cal. Pol. C. Sec.
3657.

Conda C. Min. Co. v. Ravalli County, 52
M 422, 426, 158 P 682.

Operation and Effect

Where lands were sold with reservations in the grantor of minerals, mining rights, etc., the grantor was entitled as of right under this section to have its name inserted upon the assessment-roll with each of its grantees, and to have the reservation in every instance assessed to it and not to its grantee upon proper request. Ana-

Where property is assessed in the name of a certain person and another, claiming it, desires to be assessed therefor he may under this section, have his name inserted in the assessment book with that of the former, and his request in that behalf should be sent to the county assessor and not to the county treasurer. Sutter v. Scudder, 110 M 390, 395, 103 P 2d 303.

Taxation 438.
61 C.J. Taxation § 991 et seq.

84-509. (2056) Commissioners to furnish assessor maps. The board of county commissioners must provide maps for the use of the assessor, showing the private lands owned or claimed in the county, and if surveyed under authority of the United States, the divisions and subdivisions of the survey. Maps of cities and villages or school districts may in like manner be provided. The cost of making such maps is a county charge, and must be paid from the county general fund.

History: En. Sec. 3732, Pol. C. 1895;
re-en. Sec. 2551, Rev. C. 1907; re-en. Sec.
2056, R. C. M. 1921. Cal. Pol. C. Sec. 3658.

84-510. (2057) List of lands sold by state to be transmitted by state land agent. On or before the first Monday in March in each year, the state land agent must make out and transmit to the assessor of each county where lands or lots lie that may have been sold by the state, for which certificates of purchase, patents, or deeds have issued, during the year preceding, certified lists of such lands or lots, giving a description thereof by divisions or subdivisions, or lots and blocks, together with the names of the purchasers thereof.

History: En. Sec. 3733, Pol. C. 1895;
re-en. Sec. 2552, Rev. C. 1907; re-en. Sec.
2057, R. C. M. 1921. Cal. Pol. C. Sec. 3659.

Operation and Effect

This section was enacted for the sole purpose of advising the several county as-

sessors with respect to such lands as may have been sold by the state for which either certificates of purchase or patents have issued, to the end that such lands might be listed to the vendees and assessed. *Courtney v. Missoula County*, 21 M 591, 594, 55 P 359.

References

Cited or applied as section 2552, revised codes, in *Hayes v. Smith*, 58 M 306, 312, 192 P 615; *Ford Motor Co. v. Linnane*, 102 M 325, 333, 57 P 2d 803.

Taxation⌘213.

61 C.J. Taxation § 450 et seq.

84-511. (2058) Defects in form of assessment book may be supplied. Omissions, errors, or defects in form in any original or duplicate assessment book, when it can be ascertained therefrom what was intended, may, with the consent of the county attorney, be supplied or corrected by the assessor at any time prior to the sale for delinquent taxes, and after the original assessment was made.

History: En. Sec. 193, p. 127, L. 1891; 2728, Rev. C. 1907; re-en. Sec. 2058, R. C. re-en. Sec. 4010, Pol. C. 1895; re-en. Sec. M. 1921. Cal. Pol. C. Sec. 3881.

84-512. (2059) Omissions in delinquent lists—how corrected. When the omission, error, or defect has been carried into a delinquent list or any publication, the list or publication may be republished as amended, or notice of the correction may be given in a supplementary publication.

History: En. Sec. 194, p. 127, L. 1891; Taxation⌘630.
re-en. Sec. 4011, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation § 1548 et seq.
2729, Rev. C. 1907; re-en. Sec. 2059, R. C.
M. 1921. Cal. Pol. C. Sec. 3882.

84-513. (2060) Publication of such lists. The publication must be made in the same manner as the original publication, and for not less than one week.

History: En. Sec. 195, p. 127, L. 1891; 2730, Rev. C. 1907; re-en. Sec. 2060, R. C.
re-en. Sec. 4012, Pol. C. 1895; re-en. Sec. M. 1921. Cal. Pol. C. Sec. 3883.

84-514. (2061) Abbreviations. In the assessment of land, advertisement and sale thereof for taxes, initial letters, abbreviations, and figures may be used to designate the township, range, section, or parts of section.

History: En. Sec. 196, p. 127, L. 1891; Taxation⌘421(9), 658(4).
re-en. Sec. 4013, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation §§ 883, 1596.
2731, Rev. C. 1907; re-en. Sec. 2061, R. C.
M. 1921. Cal. Pol. C. Sec. 3884.

84-515. (2062) Fines and forfeitures to be paid to county treasurer. The fines, forfeitures, and penalties incurred by a violation of any of the provisions of this title must be paid into the treasury for the use of the county where the person against whom the recovery is had resides.

History: En. Sec. 198, p. 127, L. 1891; NOTE.—The word "title" in the above
re-en. Sec. 4015, Pol. C. 1895; re-en. Sec. section referred to the entire taxation
2733, Rev. C. 107; re-en. Sec. 2062, R. C. laws from sections 2498 to 2780, revised
M. 1921. codes, 1907.

CHAPTER 6

EQUALIZATION OF TAXES BY COUNTY BOARDS OF EQUALIZATION

- Section 84-601. County commissioners—when to equalize assessment.
84-602. Equalization of assessments.
84-603. Application for reduction in valuations.
84-604. Examination of applicant.

- 84-605. Change of valuation of class of property—hearing necessary.
- 84-606. Witnesses may be subpoenaed.
- 84-607. Assessor to be present—statement of property not assessed.
- 84-608. County commissioners to use records in equalizing.
- 84-609. Board may direct assessor to assess in certain instances.
- 84-610. County clerk must keep record of proceedings and make oath.

84-601. (2113) County commissioners—when to equalize assessment. The board of county commissioners is the county board of equalization, and must meet on the third Monday of July in each year to examine the assessment book and equalize the assessment of property in the county. It must continue in session for that purpose from time to time until the business of equalization is disposed of, but not later than the second Monday in August.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891; appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2572, Rev. C. 1907; re-en. Sec. 2113, R. C. M. 1921. Cal. Pol. C. Sec. 3672.

Appeal to the Courts

Under the law as it stood in 1898, it was held that since there was no statute providing for an appeal from the action of the county assessor and board of county commissioners, sitting as a board of equalization, under sections 3700 et seq. and sections 3780-3785, of the political code of 1895, courts would not interfere with the action of such officers where the assessor acted fairly and honestly and the board gave the plaintiff a fair hearing. *Danforth v. Livingston*, 23 M 558, 562, 563, 59 P 916.

In the absence of fraud of the adoption of a fundamentally wrong principal of assessment by the taxing officers, a taxpayer may not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the county and state boards of equalization being exclusive in the absence of the contingencies referred to. *Belknap Realty Co. v. Simineo et al.*, 67 M 359, 361, 215 P 659.

Employment of Tax Experts

Held, that since under the law it is the duty of the board of county commissioners as the ex officio county board of equalization to adjust and equalize the assessments made by the assessor, i.e., to increase or lower them, it had the implied power to contract with experts to furnish it information relative to reclassification, reappraisal and revaluing the real property, with the improvements thereon in a city to enable it intelligently to perform its duties as such board of equalization. (This holding not to be understood as declaring that the board of equalization may enter

into such a contract as would deprive the assessor of his duty imposed by law, or to relieve him of his official obligation.) *State ex rel. Blair v. Kuhr*, 86 M 377, 381, 283 P 758.

While the board of county commissioners is without power to enter into a contract for services the performance of which is cast upon another county official or board, it may contract with a private individual for information relative to matters of taxation to aid it in the performance of its duties as a county board of equalization, even though, incidentally, the information received may aid other officials in the performance of their duties, provided the grant of power is to be found in the statutes. *Simpson v. Silver Bow County*, 87 M 83, 93, 285 P 195.

Responsibilities

Held under former statutes that the board of county commissioners, sitting as a board of equalization, is responsible for the correctness of the assessment book of the county. *State v. Comms. of Yellowstone Co.*, 12 M 503, 509, 31 P 78.

Term

While boards of equalization are provided for in the constitution, their periods of life are prescribed by the legislature, and they cannot hold for any other or longer period than the legislature has fixed. So, when a county board adjourned on the second Monday of August, as provided in the above section, its term of existence for that year absolutely expired. *Matador L. & C. Co. v. Custer Co.*, 28 M 286, 287, 72 P 662.

References

Cited or applied as section 2572, revised codes, in *State ex rel. Fadness v. Eie*, 53 M 138, 147, 162 P 164; *Butte Electric Co. v. McIntyre*, 71 M 21, 23, 227 P 61; *Yellowstone Packing Co. v. Hays*, 83 M 1, 12, 268 P 555.

Taxation—449(1).

61 C.J. Taxation § 926 et seq.

84-602. (2114) Equalization of assessments. The board has power after giving notice in such matter as it may by rule prescribe, to increase or lower any assessment contained in the assessment book, so as to equalize the assessment of the property contained therein and make the assessment conform to the true value of such property in money, and immediately after reaching a decision, the board shall notify the taxpayer, in writing, of such decision, specifying the change, if any, made in the assessment; said notice to be given by registered mail, addressed to the taxpayer at his last known place of residence. The board also has power, in the event that any class of property is assessed as a class, at more or less than its actual value, by the county assessor and the valuation of such property within the county demands a general reclassification by raising or lowering all of the property in said class a certain percentage, the same may be done by the board of county commissioners.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; this section en. Sec. 2573, Rev. C. 1907; re-en. Sec. 2114, R. C. M. 1921; amd. Sec. 1, Ch. 43, L. 1927; amd. Sec. 1, Ch. 187, L. 1933.

Operation and Effect

See *State v. Ellis*, 15 M 224, 227, 38 P 1079, as to the power of the county board of equalization to increase or lower assessments under this section.

Referred to as partially defining the powers and duties of the board of county commissioners, sitting as a board of equalization, in relation to individual assessments and the changes it may make in

them. *State ex rel. Fadness v. Eie*, 53 M 138, 147, 162 P 164.

References

Cited or applied as section 3781, political code, in *Montana Ore Purchasing Co. v. Maher*, 32 M 480, 486, 81 P 13; as section 2573, revised codes, in *Anaconda Copper Min. Co. v. Ravalli County et al.*, 56 M 530, 186 P 332; *Belknap Realty Co. v. Simineo et al.*, 67 M 359, 361, 215 P 659; *Yellowstone Packing Co. v. Hays*, 83 M 1, 12, 268 P 555; *State ex rel. Blair v. Kuhr*, 86 M 377, 381, 283 P 758.

51 Am. Jur. 681, Taxation, §§ 741-792.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.

84-603. (2115) Application for reduction in valuations. No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the board on or before the 1st day of August, a written application therefor, verified by his oath. Said application shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The board of county commissioners shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2574, Rev. C. 1907; re-en. Sec. 2115, R. C. M. 1921; amd. Sec. 2, Ch. 187, L. 1933; amd. Sec. 1, Ch. 103, L. 1945. Cal. Pol. C. Sec. 3674.

Operation and Effect

As a condition precedent to the reduction of the valuation of property, the party affected thereby, or claiming a reduction, or his agent, must file a written application therefor with the board of

equalization, verified by his oath, showing the facts upon which such reduction is claimed. Before a plaintiff in an action to recover taxes paid to the county treasurer, claimed to be unlawfully assessed, could be entitled to relief, his complaint should show a compliance with this essential condition. *Barrett v. Shannon*, 19 M 397, 399, 400, 48 P 746.

Defining the powers and duties of the board of county commissioners, sitting as a board of equalization, in relation to individual assessments and the changes it may make in them. *State ex rel. Fadness v. Eie*, 53 M 138, 147, 162 P 164.

When Statutory Remedies are Available

Where taxes upon lands were valid but are complained of as excessive, the question of their excessiveness must primarily have been presented to the county board of equalization, under this section before resort may be had to the statutory remedies. *Thwing v. Weiser et al.*, 65 M 28, 210 P 750.

In the absence of fraud or the adoption of a fundamentally wrong principle of assessment by the taxing officers, a taxpayer may not have recourse to the courts in the first instance to rectify an alleged excessive or erroneous assessment, the remedy provided by the statutes for having assessments adjusted by the county and state boards of equalization being exclusive in the absence of the contingencies referred to. *Belknap Realty Co. v. Simineo et al.*, 67 M 359, 361, 215 P 659.

See, also, *Yellowstone Packing Co. v. Hays*, 83 M 1, 12, 268 P 555 which is to the same effect as the above.

Where County and State Boards Had Refused to Act

In an action in the district court for a writ of mandamus by a taxpayer to compel the state board of equalization to reduce the valuation of unimproved lots in the outskirts of a city from \$51,325 to \$5,420, and the evidence showed the value thereof not to exceed about \$5,400, held, that the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant board to reduce the valuation to a figure consistent with the proof of the actual cash value. *Corcoran v. State Board of Equalization*, 116 M 499, 502, 154 P 2d 795.

References

State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

Taxation \S 449(4).

61 C.J. Taxation \S 937 et seq.

84-604. (2116) Examination of applicant. Before the board grants the application or makes any reduction applied for, it must examine on oath, the person or agent making the application touching the value of the property of such person. No reduction must be made unless such person or agent makes an application and attends and answers all questions pertinent to the inquiry; except where the investigation is made by the county commissioners and the change applies to all of a certain class of property in the county.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2575, Rev. C. 1907; re-en. Sec. 2116, R. C. M. 1921; amd. Sec. 3, Ch. 187, L. 1933. Cal. Pol. C. Sec. 3675.

References

Cited or applied as section 2575, revised codes, in *State ex rel. Fadness v. Eie*, 53 M 138, 147, 162 P 164; *Belknap Realty Co. v. Simineo et al.*, 67 M 359, 361, 215 P 659; *State ex rel. Blair v. Kuhr*, 86 M 377, 384, 283 P 758.

84-605. (2116.1) Change of valuation of class of property—hearing necessary. The state board of equalization shall not be authorized to raise the value of any class of property in any county until after a public hearing in said county and on evidence received at said hearing and shall have no authority to raise the value of any class of property higher than the actual value established by testimony adduced at such hearing.

History: En. Sec. 4, Ch. 187, L. 1933.

84-606. (2117) Witnesses may be subpoenaed. Upon the hearing of the application the board may subpoena such witnesses, hear and take such evidence in relation to the subject pending, as in its discretion it may deem proper.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol.

C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2576, Rev. C. 1907; re-en. Sec. 2117, R. C. M. 1921. Cal. Pol. C. Sec. 3676.

References

Cited or applied as section 2576, revised codes, in State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Belknap Realty

Co. v. Simineo et al., 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

84-607. (2118) Assessor to be present—statement of property not assessed. During the session of the board the assessor and any deputy whose testimony is needed must be present and may make any statement, or introduce and examine witnesses on questions before the board. At said meeting of the board of equalization the county assessor shall present to said board a statement setting forth all property which has escaped assessment or which, by reason of erroneous reports or otherwise, has been assessed for less than its correct value; thereupon it shall be the duty of said board immediately and while sitting as a board of equalization, to investigate said statement, and in the event that any property owner has been assessed for property at a smaller amount or at a less valuation than should properly have been given, said board shall correct such assessment in the manner provided for the correction of assessments by the board of equalization.

84-607
Amended
L. '51, c. 102
Sec. 1, p. 166

History: En. Sec. 3785, Pol. C. 1895; re-en. Sec. 2577, Rev. C. 1907; amd. Sec. 1, Ch. 53, L. 1921; re-en. Sec. 2118, R. C. M. 1921. Cal. Pol. C. Sec. 3677.

References

Cited or applied as section 2577, revised codes, in State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Belknap Realty Co. v. Simineo et al., 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

84-608. (2119) County commissioners to use records in equalizing. The board of county commissioners must use the abstract and all other information it may gain from the records of the county clerk or elsewhere, in equalizing the assessment of the property of the county, and may require the assessor to enter upon the assessment book any property which has not been assessed; and any assessment made as prescribed in this section has the same force and effect as if made by the assessor before the delivery of the assessment book to the county clerk.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2580, Rev. C. 1907; re-en. Sec. 2119, R. C. M. 1921. Cal. Pol. C. Sec. 3679.

codes, in State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

Cited or applied as section 3788, political code, in Cosier v. McMillan, 22 M 484, 56 P 965; Belknap Realty Co. v. Simineo et al., 67 M 359, 361, 215 P 659; State ex rel. Blair v. Kuhr, 86 M 377, 384, 283 P 758.

References

Cited or applied as section 2580, revised

84-609. (2120) Board may direct assessor to assess in certain instances. During the session of the board of county commissioners it may direct the assessor to assess any taxable property that has escaped assessment, or to add to the amount, number, or quantity of property, when a false or incomplete list has been rendered, and to make and enter new assessments (at the same time canceling previous entries), when any assessment made by him is deemed by the board so incomplete as to render doubtful the collection of the tax; but the clerk must notify all persons interested, by letter deposited in the postoffice, postpaid, and addressed to the person interested,

at least ten days before the action is taken, of the day fixed when the matter will be investigated.

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2581, Rev. C. 1907; re-en. Sec. 2120, R. C. M. 1921. Cal. Pol. C. Sec. 3681.

Operation and Effect

Where the board, instead of requiring the assessor to do so, itself placed a valuation upon the stock in trade of an Indian post trader licensed to do business upon a reservation, the property in question being subject to state and county taxation so long as the Indians were not interested therein, the irregularity in making the assessment was waived by the appearance of the taxpayer before the board to request it to strike the same, without objecting either to the irregularity or to the valuation adopted. *Cosier v. McMillan*, 22 M 484, 490, 491, 56 P 965.

The right of the owner of property to obtain relief from illegal taxes by injunction is not in anywise affected by his failure, after notice from the board, to make timely objection. *Barnard Realty Co. v. City of Butte*, 50 M 159, 167, 145 P 946.

Where a county board of equalization gave notice to a taxpayer on August 8, 1896, to appear on September 8th, following, the notice mailed on the former date was void, the functions of the board as a board of equalization having, as prescribed in section 84-4107, expired on the second Monday of August, which was the

tenth of the month. *Matador Land & Cattle Co. v. Custer County*, 28 M 286, 287, 72 P 662.

Ten Day Notice

The notice of ten days, required by this section to be given a taxpayer, is jurisdictional. *Western Ranches v. County of Custer*, 28 M 278, 281, 72 P 659; *Montana Ore Purchasing Co. v. Maher*, 32 M 480, 487, 81 P 13. See, also, *Anaconda Copper Min. Co. v. Ravalli County*, 56 M 530, 533, 186 P 332; *Western Ranches v. Custer County*, 89 Fed. 577.

Failure by the county board of equalization to give a taxpayer the ten days' notice of an increase in his assessment, is not waived by his voluntary appearance before the board, after the raise had been made, for the purpose of seeking a reduction of the assessment. *Western Ranches v. County of Custer*, 28 M 278, 281, 72 P 659; *Montana Ore Purchasing Co. v. Maher*, 32 M 480, 488, 81 P 13. See *Anaconda Copper Min. Co. v. Ravalli County*, 56 M 530, 533, 186 P 332.

References

Cited or applied as section 2581, revised codes, in *Dolenty v. Broadwater County*, 45 M 261, 263, 122 P 919; *State ex rel. Fadness v. Eie*, 53 M 138, 147, 162 P 164; *Belknap Realty Co. v. Simineo et al.*, 67 M 359, 361, 215 P 659.

Taxation \hookrightarrow 360, 362.

61 C.J. Taxation §§ 809, 990 et seq.

84-610. (2121) County clerk must keep record of proceedings and make oath. The county clerk must record, in a book to be kept for that purpose, all changes, corrections, and orders made by the board, and during its session, or as soon as possible after its adjournment, must enter upon the assessment book all changes and corrections made by the board, and on or before the first Monday of August must affix his affidavit thereto, subscribed by him as follows: "I, _____, do swear that, as county clerk of _____ county, I have kept correct minutes of all the acts of the board of county commissioners touching alterations in the assessment book; that all alterations agreed to or directed to be made have been made and entered in the book, and that no changes or alterations have been made therein except those authorized."

History: Secs. 2113 to 2121 were enacted as Secs. 60 to 70, pp. 96 to 99, L. 1891, appearing as Secs. 3780 to 3790, Pol. C. 1895; re-en. Secs. 2572 to 2582, Rev. C. 1907; Sec. 2582, Rev. C. 1907; re-en. Sec. 2121, R. C. M. 1921. Cal. Pol. C. Sec. 3682.

Operation and Effect

Changes wrought in assessments by the

board of county commissioners, sitting as a board of equalization, must be noted by the clerk and entered on the book in the proper places. *State ex rel. Fadness v. Eie*, 53 M 138, 147, 162 P 164.

References

Belknap Realty Co. v. Simineo et al., 67 M 359, 361, 215 P 659.

CHAPTER 7

EQUALIZATION OF TAXES AND ADMINISTRATION AND SUPERVISION
OF ALL TAX LAWS BY STATE BOARD OF EQUALIZATION

Tit. 84, c. 7
New matter
L. '51, c. 50
Secs. 1-11
pp. 94-97

- Section 84-701. State board of equalization—appointment of members—term of office.
 84-702. Qualification and compensation.
 84-703. Organization, quorum, sessions.
 84-704. Definitions.
 84-705. Employees—expenses—engineer assistance—minutes—rules.
 84-706. Office, furnishings and supplies.
 84-707. Continuity of action of former board.
 84-708. Powers and duties.
 84-709. Appeal to state board of equalization—hearing.
 84-710. Notice of intention to change assessment.
 84-711. Assessment of omitted property—limitation.
 84-712. Statement of changes to be sent to county clerk.
 84-713. Determination of state rate of taxation—notice of.
 84-714. Penalty for refusal to furnish information.
 84-715. Duties of public officers.
 84-716. Hearings, witnesses, contempt, fees and subpoenas.
 84-717. Seal.
 84-718. Unconstitutionality or invalidity.
 84-719. Assessment and apportionment by board—when made.
 84-720. Transmission of assessment and apportionment to county clerk.
 ✓ 84-721. Entering of state board's assessment in assessment book.
 ✓ 84-722. Change of assessment—application—hearing—reassessment.
 84-723. Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes imposed on state board of equalization.

84-701. (2122.1) State board of equalization—appointment of members—term of office. The state board of equalization, created by article XII of the constitution as amended shall be composed of three members to be appointed by the governor by and with the advice and consent of the senate. The members of said board shall be appointed within ten days after the passage of this act, and before the adjournment of the present legislative assembly. The governor shall designate the term of service of each member first appointed, so that the term of one shall end March 1st, 1925, of another March 1st, 1927, and of the third March 1st, 1929. Each succeeding member shall hold his office for a term of six years, and until his successor shall be appointed and shall have qualified. Any vacancy shall be filled by appointment in accordance with the provisions of the constitution. Succeeding appointments, except when made to fill a vacancy, shall be made on or before the last day of January during the biennial session of the legislative assembly, next preceding the commencement of the term for which the appointment is made.

History: En. Sec. 1, Ch. 3, L. 1923. Taxation 446½.

References: 59 C.J. States § 174; 61 C.J. Taxation § 952 et seq.
 Tax Commission Case, 68 M 450, 462, 51 Am. Jur. 681, Taxation, §§ 741-792.
 219 P 817.

84-702. (2122.2) Qualification and compensation. The persons to be appointed as members of such board shall be such as are known to possess knowledge of the subject of taxation and skill in matters pertaining thereto. No persons so appointed shall hold any other office under the laws of this state nor any other state, nor any office under government of the United States, or of any other state. He shall devote his entire time to the duties of the office and shall not hold any position of trust or profit, nor engage in any

occupation or business interfering or inconsistent with his duties, or serve on or under any committee of any political party, or take part either directly or indirectly in any political campaign in the interest of any political party, or organization or candidate for office. Each member shall receive an annual salary of five thousand (\$5000.00) dollars, payable in equal monthly installments. He shall also be paid his actual traveling and other expenses when away from the capital on official business.

History: En. Sec. 2, Ch. 3, L. 1923.

84-703. (2122.3) Organization, quorum, sessions. The members of said board of equalization first appointed, shall without delay, meet at the state capital and shall organize and elect one of their members as chairman. A majority of said board shall constitute a quorum. It shall be in continuous session and open for the transaction of business every day except Sundays and legal holidays; and the sessions of said board shall stand and be deemed to be adjourned from day to day without formal entry thereof upon its records. The board may hold sessions or conduct hearings and investigations at other places than the capitol when deemed necessary to facilitate the performance of its duties or to accommodate parties in interest.

History: En. Sec. 3, Ch. 3, L. 1923.

84-704. (2122.4) Definitions. (1) The term "state board" or "board" when used in this act without other qualification, shall mean the state board of equalization.

(2) The term "person," when used in this act, shall mean and include any individual, firm, partnership, association or corporation unless otherwise expressly stated.

(3) The phrase "municipal corporation" or "municipality" or "taxing unit" when used in this act shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue.

History: En. Sec. 4, Ch. 3, L. 1923.

84-705. (2122.5) Employees—expenses—engineer assistance—minutes—rules. Subject to the provisions of sections 59-901 and 59-902, the state board of equalization may appoint a secretary and employ such other persons as experts, assistants, clerks and stenographers, as may be necessary to perform the duties that may be required of it. The total expenses of such board shall not exceed, in the aggregate, during any fiscal year, the amount appropriated for the board for all purposes by the legislature for such year. Said board may also require the assistance of any engineer in the service of any department of the state government without additional compensation other than such as he is already receiving. The secretary shall keep full and correct minutes of the transactions and proceedings of said board, shall have authority to administer oaths and perform such other duties as may be required of him. The board may make all needful rules for the orderly and methodical performance of its duties as a board of

equalization or otherwise and for conducting hearings and other proceedings before it.

History: En. Sec. 5, Ch. 3, L. 1923; amd. Sec. 1, Ch. 82, L. 1947.

84-706. (2122.6) Office, furnishings and supplies. The board shall keep its office at the capitol, and shall be provided with suitable and necessary offices and office furniture, printing, supplies, stationery, books, periodicals, and financial and commercial reports.

History: En. Sec. 6, Ch. 3, L. 1923.

84-707. (2122.7) Continuity of action of former board. All records, books, documents, reports, and correspondence, received and kept by the former state board of equalization, and all other property in its possession, shall immediately, upon the organization of the new board, be transferred to it for its use and convenience. The board shall have and possess all the powers and authority and be subject to all the duties heretofore possessed by and imposed upon the former state board of equalization. The board shall continue and complete any and all work undertaken or commenced and not completed by its predecessor. All acts of the former state board of equalization initiated and completed in whole or in part since the adoption of the constitutional amendment creating the new board are hereby ratified and confirmed in such manner as to preserve the continuity of all action taken by the state board of equalization regarding taxation or any other duties imposed upon it relating to public revenue. The salaries and traveling expenses of assistants and clerks, formerly employed by the old board, for services performed from the time of the adoption of the constitutional amendment until the organization of the new board shall be paid as though the old board had been continued in full force and effect until the organization of the new board, and shall be paid out of the appropriation for such purposes made for the former board.

Officers of municipal corporations heretofore required to make reports to the state board of equalization shall report to the board hereby constituted.

History: En. Sec. 7, Ch. 3, L. 1923.

84-708. (2122.8) Powers and duties. It shall be the duty of the board and it shall have power and authority in addition to any authority under the present statutes:

(1) To prescribe rules and regulations, not in conflict with the constitution and laws of the state of Montana, to govern county boards of equalization and the assessors of the different counties in the performance of their duties.

(2) To prepare and enforce the use of forms in relation to the assessment of property.

(3) To annually assess the franchise, roadway, roadbeds, rails, and rolling stock, and all other property of all railroads, and the pole lines and rights-of-way and all other property of all telegraph and telephone lines, electric power and transmission lines, ditches, canals and flumes, and other similar property, constituting a single and continuous property operated in more than one county in the state, and to apportion such assessments to

the counties in which such properties are located on a mileage basis; provided, however, that lots and parcels of real estate not included in right-of-way, with the buildings, structures, and improvements thereon, dams and power houses, depots, stations, shops, and other buildings, erected upon right-of-way, furniture, machinery, and other personal property, shall not be considered as a part of any such single and continuous property, but shall be considered as separate and distinct therefrom, and shall be assessed by the county assessor of the county wherein they are situate.

(4) To transmit to the county clerk of each county its apportionment of all assessments made by such board.

(5) To adjust and equalize the valuation of taxable property among the several counties, and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of county assessors and county boards of equalization; change, increase or decrease valuations made by county assessors or equalized by county boards of equalization; and exercise such authority and do all things necessary to secure a fair, just and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(6) To have and exercise general supervision over the administration of the assessment and tax laws of the state, and over assessors, county boards of equalization, boards of county commissioners, and other officers of municipal corporations, having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law, and to supervise the administration of all revenue laws of the state and assist in their enforcement, and for that purpose may visit each county in the state whenever deemed necessary, and may call, not to exceed one meeting of the county assessors each year at the capitol, for consultation and instruction, the expense of such attendance to be paid by the respective counties.

(7) To confer with, advise and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(8) To direct proceedings, actions and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities and punishment of public officials and persons, or their agents, for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations, and to cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(9) To require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(10) To collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful

in the work of the board in such form and upon such blanks as the board shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the board all blanks so transmitted and in every way aid the board in its work; to examine the records of all municipal corporations for such purposes as are deemed needful or helpful by the board.

(11) In its discretion, to inspect and examine, or cause an inspection and examination of the records of the officers of any municipality, whenever such officer shall have failed, neglected or refused to return properly the information required by this section within the time set by the board. Upon completion of such inspection and examination the board shall transmit to the clerk, or other proper official of the municipality, a statement of the expenses incurred by the board to secure the necessary information. A duplicate of such statement shall be filed in the office of the state board of examiners and when approved and allowed shall be paid the same as other expenses of the board. Within sixty days after the receipt by the municipality of the above statement, the same shall be audited, as other claims of the municipal corporation are audited and shall be paid into the state treasury and if the same is not so paid the attorney general shall institute an action, in the proper court, against the municipality to recover the same.

The officers responsible for the furnishing of the information collected pursuant to this section, shall be jointly and severally liable for any loss the municipality may suffer, through their delinquency; and no payment shall be made to them for salary, or on any other account, until the cost of such inspection and examination as provided above shall have been paid into the treasury, or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(12) To require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes and all other facts which may enable the board to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(13) To summon witnesses to appear and give evidence, and to produce records, books, papers and documents relating to any matter which the board shall have authority to investigate and determine.

(14) To cause the deposition of witnesses residing within or without the state, or absent therefrom, to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the board shall have authority to investigate and determine.

(15) To examine into all cases where evasion or violation of the laws for taxation of property, proceeds, occupation or business is alleged, complained of or discovered, and to ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(16) To investigate the tax systems of other states and countries and to formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in

the system of taxation and the economical expenditure of public revenue in the state.

(17) To consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto and the progress of the work of the board, and to furnish the governor such assistance as he may require.

(18) To transmit to the governor and to each member of the legislature twenty days before the meeting of the legislature a report of the board, showing all the taxable property of the state and the value of the same in tabulated form, with recommendations for improvement in the system of taxation, together with such measures as may be formulated for the consideration of the legislature.

(19) To exercise and perform such further powers and duties as are or may be granted to or imposed upon the board by law.

History: En. Sec. 8, Ch. 3, L. 1923.

Operation and Effect

The state board of equalization as a taxing body, while properly exercising its authority, is supreme; in the exercise of its powers it has a wide discretion, and its decisions, when honestly arrived at, will not be disturbed by the courts; where, however, it has pursued a fundamentally wrong method of assessment or has acted fraudulently or maliciously, or where error so gross as to be inconsistent with any exercise of honest judgment is shown, courts will grant relief. *State v. State Board of Equalization*, 93 M 19, 60, 17 P 2d 68.

Overvaluations Honestly Made—Court Will Not Substitute Judgment

The supreme court will not, in a tax recovery action where overvaluation is alleged, substitute its judgment for that of the taxing officials, and will not notice an alleged overvaluation honestly made, but will grant relief only where the overvaluation is so gross as to be inconsistent with the exercise of honest judgment. *Investors Security Co. v. Moore and Baker v. Moore*, 113 M 400, 405, 127 P 2d 225.

References

State ex rel. Northern P. Ry. Co. v. Duncan, 68 M 420, 424, 219 P 638; *Butte Electric Ry. Co. v. McIntyre*, 71 M 21, 23, 227 P 61.

84-709. (2122.9) Appeal to state board of equalization—hearing. Any person, firm or corporation or the board in behalf of the state, or any municipal corporation, aggrieved by the action of any county board of equalization, may appeal to the state board by filing with the county board a notice of appeal, and a duplicate thereof with the state board, within ten days after the action of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest, and shall give to the appellant and to the county board at least five days notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record or may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members, to its secretary, counsel or chief auditor for the conduct of such hearing, and the person so designated shall have and exercise all the powers of the board in conducting such hearings, and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony

received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the person designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board.

History: En. Sec. 9, Ch. 3, L. 1923; amd. Sec. 1, Ch. 33, L. 1939.

Operation and Effect

The decision of the state board of equalization made after hearing the appeal of a taxpayer from an adverse ruling of a county board of equalization is quasi judicial, and on application for writ of certiorari the supreme court may not go back of the record made by the state board, the presumption obtaining that its findings were justified by the testimony heard by it at the hearing. *State ex rel. Schoonover v. Stewart*, 89 M 257, 273 et seq., 297 P 476.

Id. Where the state board of equalization, at the time it makes an order reducing assessments on a given class of lands on appeal of certain of the taxpayers, knows that there are other owners in like situation, its full duty in the premises is not discharged by the order of reduction in the specific instances, but it is its further duty, after giving notice, to reduce valuations of such others to avoid discrimination, i.e., to equalize the values; its failure in that behalf, however, does not deprive such others of their rights.

Id. The state board of equalization on appeal by a number of owners of irrigated and irrigable lands in a certain county, after a hearing, reduced the valuations made by the assessor and approved by the county board of equalization. Relator, owner of like lands in the same vicinity who had not complained of his assessment or appeared at the hearing to object to the granting of relief to appellants, instituted proceedings in certiorari in the supreme court, attacking the jurisdiction of the board in making its order, in effect alleging that by the order he was being discriminated against. He neither charged fraud nor that the board had adopted a fundamentally wrong principle of assessment. Held, that the burden of showing that the board had acted in excess of its

authority was upon relator, that he failed to do so, and that therefore dismissal must follow.

When Aggrieved Taxpayer May Resort to Courts

The state board of equalization in a hearing on appeal to it involving a tax matter acts in a quasi-judicial capacity, and the presumption obtains that its findings were justified by the evidence taken at the hearing. An aggrieved taxpayer may resort to the courts for review if he can show fraud or other unlawful acts, such as arbitrary increase of valuation, wrong principle of assessment, or error so gross as to be inconsistent with any honest exercise of judgment, but if his complaint is not so predicated it does not state a cause of action. (Sec. 84-4503 held unconstitutional in part.) *International Business Machine Corporation v. Lewis and Clark County*, 111 M 384, 387, 112 P 2d 477.

Where County and State Boards Had Refused to Act

In an action in the district court for a writ of mandamus by a taxpayer to compel the state board of equalization to reduce the valuation of unimproved lots in the outskirts of a city from \$51,325 to \$5,420, and the evidence showed the value thereof not to exceed about \$5,400, held, that the assessed value was so far in excess of what the actual cash value was as to indicate the assessment was arbitrary and constructively fraudulent, and the trial court erred in not directing the defendant board to reduce the valuation to a figure consistent with the proof of the actual cash value. *Corcoran v. State Board of Equalization*, 116 M 499, 502, 154 P 2d 795.

Taxation \hookrightarrow 449(5).

61 C.J. Taxation § 945 et seq.

84-710. (2122.10) Notice of intention to change assessment. When the state board of equalization shall contemplate making any change in the assessment of any property assessed to any particular person (except in a case where an appeal has been filed with the state board) said board shall, before making any change in such assessment, fix a time and place for a hearing thereon, and give to such taxpayer written notice of such hearing by registered letter deposited in the post office postpaid, and directed to

said taxpayer at his last known place of residence, at least ten days before the day fixed for such hearing. Such notice shall state the purpose of such hearing and the time and place when the same will be held.

When the state board of equalization shall contemplate raising or lowering the assessed valuation of any one or more classes of property in any county, it shall give notice of its contemplated action to the board of county commissioners of the county in which such class or classes of property is situated, in such manner as it shall deem proper and sufficient, and shall fix a time and place within the county in which such change of assessment is proposed for a hearing thereon; provided, however, that if the change affects one or more classes of property common to more than one county the board shall fix the time and place of hearing so as to accommodate the counties interested. At the time and place fixed for such hearing any taxpayer or any officer of any municipal corporation interested therein may appear and be heard.

History: En. Sec. 10, Ch. 3, L. 1923.

84-711. (2122.11) Assessment of omitted property—limitation. Whenever the state board of equalization shall, in any year, discover that any taxable property of any person has not been assessed in such year, or that it has been omitted from taxation during any previous year or years, the state board may assess the same for such year or for such previous years. The order making the assessment shall contain the name of the person to whom the property is assessed, a general description of such property, its assessed valuation, the year for which it is assessed and the county in which the same is assessed. A copy of such order shall be transmitted to the officer of the county, in whose possession the assessment books of such county are at the time of the making of such order by the board, and such officer shall immediately after receiving such copy, enter the assessment on the tax books of the county for the year in which such order is made, and thereupon such assessment shall have the same force and effect as though originally made by the county assessor; provided, however, that before making any such assessment the state board of equalization shall give the person to whom such property is proposed to be assessed, notice of its intention to make such assessment, and the time and place when a hearing will be had thereon; such notice to be given either by registered letter or personal service at least ten days before the date so fixed for such hearing; and provided further that all assessments of omitted property must be made within three years after the end of the calendar year in which the same should have been assessed.

History: En. Sec. 11, Ch. 3, L. 1923.

Operation and Effect

Held, that chapter 3, laws of 1923 (84-701 et seq.) empowering the state board of equalization by this section to assess property which theretofore escaped taxation, provided the assessment be made within three years after the end of the calendar year in which the same should have been assessed, is not open to the objection that it is retroactive in its opera-

tion. *Butte & Superior Min. Co. v. McIntyre*, 71 M 254, 257 et seq., 229 P 730.

References

Simpson v. Silver Bow County, 87 M 83, 95, 285 P 195; *State v. State Board of Equalization*, 93 M 19, 60, 17 P 2d 68.

Taxation ⌘ 362.

61 C.J. Taxation § 809.

51 Am. Jur. 689, Taxation, §§ 753 et seq.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248. Sufficiency of compliance with statute providing for service by mail of notice in tax procedure. 155 ALR 1279.

84-712. (2122.12) Statement of changes to be sent to county clerk. The secretary of the board shall transmit to each county clerk a statement of the changes made by the board in the assessment book of the county, or any assessment contained therein, which shall be prima facie evidence of the regularity of all proceedings of the board resulting in the action which is the subject matter of the statement.

History: En. Sec. 12, Ch. 3, L. 1923.

Taxation—449(5).

61 C.J. Taxation § 945 et seq.

84-713
(2122.13 RCM
'35)
Ref. to
SL '49, C. 25
Sec. 1, P. 36

84-713. (2122.13) Determination of state rate of taxation—notice of. Between the first and third Mondays of August of each year, the board must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing twelve per cent for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the legislative assembly for state purposes. The board must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state board of equalization thereof.

History: En. Sec. 13, Ch. 3, L. 1923.

Taxation—305.

61 C.J. Taxation § 694 et seq.

84-713
(2122.13
R.C.M. '35)
Ref. to
L. '51, c. 120
Sec. 1, p. 203

84-714. (2122.14) Penalty for refusal to furnish information. If any person shall refuse inspection of any books or records when requested by the board or its authorized agent, or shall refuse or neglect to furnish any information called for by the board in the performance of its official duties relating to the assessment and taxation of property the board shall make such determination and assessment of his or its property as in its judgment appears to be just and equitable, and may add to its assessment thus made not more than twenty per cent thereof as a penalty for such refusal or neglect. The board shall immediately notify the person so assessed of its action, either by registered mail or by personal service of such notice. Such action of the board and the assessment so made shall be final and conclusive unless the party so assessed, (1) shall, within twenty days after receiving such notice, furnish all information requested by the board and show cause before the board why such assessment and penalty should be modified or annulled, when the board shall then from all information presented to it or from its own investigation make such assessment as to it seems just and equitable; or, (2) unless the party assessed shall within sixty (60) days after receiving such notice, appeal to the district court of Lewis and Clark county from the action of the board in making such assessment and imposing such penalty by serving on the board and filing in the office of the clerk of said district court notice of appeal therefrom together with a bond conditioned for the payment of such amount as the judgment of said court may require within thirty (30) days after the entry of such judgment. Upon the hearing of such appeal the court shall determine whether the board of equalization was entitled to inspect such books or records, or was entitled to the information requested by the board, and if the court shall find that the

board was entitled to inspect such books or records or was entitled to the information requested by the board, the court shall not change or modify in any manner the assessment as made or the penalty added to such assessment by the board but if the court shall find that the board was not entitled to inspect such books or records, or was not entitled to the information requested by the board, then the court shall enter a judgment changing and modifying the assessment made by the board by striking out the penalty added thereto by the board.

History: En. Sec. 14, Ch. 3, L. 1923.

Taxation⇒837.

61 C.J. Taxation § 2111 et seq.

84-715. (2122.15) Duties of public officers. It shall be the duty of all public officers of the state and of any municipality to give to the board information in their possession relating to taxation when required by the board, and to cooperate with and aid the board in every manner in its efforts to secure a fair, equitable and just enforcement of the taxation and revenue laws of the state.

History: En. Sec. 15, Ch. 3, L. 1923.

Taxation⇒450(1).

61 C.J. Taxation § 971 et seq.

84-716. (2122.16) Hearings, witnesses, contempt, fees and subpoenas. Oaths to witnesses in any investigation by the board may be administered by the secretary or a member of the board. In case any witness shall fail to obey any summons to appear before said board, or shall refuse to testify, or answer any material question, or to produce records, books, papers or documents when required to do so, such failure or refusal shall be reported to the attorney general, who shall thereupon institute proceedings in the proper district court to compel obedience to any summons or order of the board, or to punish the witness for such neglect or refusal. Any person who shall testify falsely in any material matter, under consideration by the board shall be guilty of perjury and punished accordingly. Witnesses attending shall receive like compensation as witnesses in the district court. Such compensation shall be charged to the proper appropriation for the board.

History: En. Sec. 16, Ch. 3, L. 1923.

84-717. (2122.17) Seal. The state board of equalization shall have a seal and such seal shall have the following words engraved thereon, "Board of Equalization of the State of Montana." The board shall authenticate all of its orders, records and proceedings with such seal, and the courts of this state shall take judicial notice of such seal.

History: En. Sec. 17, Ch. 3, L. 1923.

Taxation⇒446½.

61 C.J. Taxation § 954 et seq.

84-718. (2122.18) Unconstitutionality or invalidity. If any clause, sentence, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined, in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No caption of any section or set of sections shall in any way affect the interpretation of this act, or of any part thereof.

History: En. Sec. 18, Ch. 3, L. 1923. Statutes 64(8).
59 C.J. Statutes § 215.

84-719. (2122.19) Assessment and apportionment by board—when made.

The state board of equalization must, on or before the third Monday in July of each year, assess the net proceeds of all mines and all property required by law to be assessed by such board, and must apportion to the counties and to the cities, towns, school districts and other taxing districts therein, in the manner provided by law, the total assessment of each of the properties so assessed by such board.

History: En. Sec. 1, Ch. 180, L. 1925. Taxation 382.
61 C.J. Taxation § 841.

84-720. (2122.20) Transmission of assessment and apportionment to county clerk. The state board of equalization must, on or before the fourth Monday in July of each year, transmit to the county clerk of each county to which any such apportionment is made, a statement with reference to each property so assessed and apportioned, containing a description thereof sufficient for identification, and stating the kind and character and the amount, quantity and extent of such property and the value thereof in each city, town, school district and other taxing district within the county, and the total value thereof in the county, and such board must, at the time of transmitting such statement to the county clerk, transmit a copy thereof to the owner of such property or to the person to whom the same is to be assessed.

History: En. Sec. 2, Ch. 180, L. 1925.

84-721. (2122.21) Entering of state board's assessment in assessment book. The county clerk must, on the receipt of each such statement from the state board of equalization, immediately enter on the assessment books of the county the assessment of such property as contained in such statement, and the same shall constitute the assessment of such property for taxation purposes in such county and in such cities, towns, school districts and other taxing districts of such county; provided that if any city or town in such county shall have provided by ordinance for the collection of its taxes by its own officers the county clerk must immediately after entering such assessment on the assessment books of the county, transmit a copy of so much of such statement as affects such city or town to the clerk thereof, and such city or town clerk shall on receipt thereof enter such assessment on the assessment books of such city or town. All such property is taxable upon such assessment at the same rate, by the same officers, and for the same purposes as other taxable property within such counties, cities, towns, school and other taxing districts, respectively, and such taxes must be collected in the same manner and by the same officers as other taxes are collected.

History: En. Sec. 3, Ch. 180, L. 1925. Taxation 411.
61 C.J. Taxation § 866 et seq.

84-722. (2122.22) Change of assessment—application—hearing—reassessment. At any time after the assessment of any property by the state board of equalization, and before the fourth Monday in August of the year in which such assessment is made, the owner of such property, or the person

to whom the same is assessed, may make written application to the state board of equalization to have such assessment changed or corrected in any respect or particular, or to have the assessment set aside and a reassessment made by such board, which application must set forth specifically the grounds and reasons on which such application is based. On receipt of any such application the board must make an order fixing a day for hearing the same, giving the applicant at least ten days notice in writing of the day so fixed for such hearing. And the state board of equalization may, on its own initiative, when it believes that an error or mistake has been made in an assessment made by it, or that it is for the best interests of the state so to do, at any time before the fourth Monday in August of the year in which such assessment is made, make an order for a hearing thereon, giving the owner of or person to whom such property is assessed, at least ten days written notice of the day so fixed for such hearing, in which said notice and order must be stated briefly, the mistake or error believed to exist by such board and the manner in which it is proposed to correct the same, or wherein the interests of the state require a change to be made in such assessment and the nature of the change proposed therein. On any such hearing, whether held on application of the owner or person to whom the property is assessed or on the initiative of the state board of equalization, such board, after hearing and considering all evidence introduced on such hearing, may make such changes or corrections in such assessment as it may deem necessary and proper, or may set aside such assessment and make a reassessment of such property; provided that all such hearings must be held and all such changes, corrections or reassessments made by the state board of equalization before the second Monday in October. When any change or correction is made in any assessment, or any reassessment is made as the result of such hearing the board of equalization must, within fifteen days thereafter, transmit to the county clerk of each county to which such property has been apportioned, or which is affected by such changes, corrections or reassessments, a statement (which) shall be in the same form and contain the same details as the statement required by section 84-720. On receipt of any such statement the county clerk must immediately make the necessary and proper changes in the assessment of such property on the assessment books of the county as shown by such statement, and if any change or correction in such assessment or such reassessment affects any city or town which collects its taxes by its own officer, the county clerk must, after entering the same on the assessment books of the county, transmit to such city or town clerk so much of such statement as affects such city or town and such city or town clerk must thereupon make such changes and corrections on the assessment books of such city or town.

History: En. Sec. 4, Ch. 180, L. 1925. Taxation 404.
61 C.J. Taxation § 818.

84-723. (2122.23) Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes imposed on state board of equalization. The duty of collecting the non-resident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to-wit: The corporation license tax, taxes on express companies and sleeping car companies, coal mines, and dealers license taxes, metaliferous mines license tax,

cement producers and dealers license taxes, the gasoline distributors and dealers license tax, the oil producer's license tax and all other license taxes determined by the state board of equalization, the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state board of equalization; such collections to be turned over to the state treasurer on the 10th and 25th day of each and every month, and it is further provided that all duties heretofore imposed by law upon the state treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state board of equalization.

History: En. Sec. 1, Ch. 79, L. 1927.

Taxation Ⓒ550.

61 C.J. Taxation § 1304 et seq.

CHAPTER 8

RAILROADS OPERATING IN MORE THAN ONE COUNTY—ASSESSMENT FRANCHISE, ETC. BY STATE BOARD OF EQUALIZATION

- Section 84-801. Assessment of railroads.
84-802. Assessment, how made.
84-803. Duties of the state board and county assessors respecting statement.
84-804. Record of assessment and apportionment of railroads.

84-801. (2131) **Assessment of railroads.** The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons, owning or operating any railroad in more than one county in this state, must, on or before the first day of April of each year, furnish the said board a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding:

(1). The whole number of miles of railroad in the state; and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association.

(2). The value of the roadway, roadbed, and rails of the whole railroad, and the value of the same within the state.

(3). The width of the right of way.

(4). The number of each kind of all rolling-stock used by such corporation, person, or association in operating the entire railroad, including the part without the state.

(5). Number, kind, and value of rolling-stock owned and operated in the state.

(6). Number, kind, and value of rolling-stock used in the state, but now owned by the party making the returns.

(7). Number, kind, and value of rolling-stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

(8). The whole number of side-tracks in each county, including the number of miles of track in each railroad yard in the state.

(9). The number of each kind of rolling-stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight, and other cars, or property owned or leased by such corporation, persons, or association.

(10). The number of sleeping and dining cars not owned by such corporation, person, or association, but used in operating the railroads of such corporation, person, or association in the state, or on the line of the road without the state, during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

(11). A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state board of equalization upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12). Also showing in detail for the year preceding the first of January:

(a). The gross earnings of the entire road;

(b). The gross earnings of the road within the state, and where the railroad is let to other operators, how much was derived by the lessor as rental;

(c). The cost of operating the entire road, exclusive of sinking fund, expenses, of land department, and money paid to the United States;

(d). Net income for such year, and amount of dividend declared;

(e). Capital stock authorized;

(f). Capital stock paid in;

(g). Funded debt;

(h). Number of shares authorized;

(i). Number of shares of stock issued.

(13). Any other facts the state board of equalization may require.

History: Ap. p. Sec. 1675, 5th Div. State v. North American Car Corporation, Comp. Stat. 1887; amd. Sec. 43, p. 87, L. ____ M ____, 164 P 2d 161. 1891; re-en. Sec. 3737, Pol. C. 1895; re-en. Sec. 2556, Rev. C. 1907; re-en. Sec. 2131, R. C. M. 1921; amd. Sec. 1, Ch. 7, L. 1925. Cal. Pol. C. Sec. 3664.

References

Referred to as section 43, laws of 1891, in Northern Pac. Ry. Co. v. Brogan, 52 M 461, 464, 158 P 820; Hays v. Smith, 58 M 312, 316, 192 P 615; Ford Motor Co. v. Linnane, 102 M 325, 333, 57 P 2d 803;

Taxation 390-393.

61 C.J. Taxation § 852 et seq.

51 Am. Jur. 790, Taxation, §§ 887 et seq.

What property is within provision in relation to local taxation of certain railroad property under statute or constitution providing for assessment or taxation of railroad property by state commission or board. 80 ALR 252.

84-802. (2132) Assessment, how made. The state board of equalization must assess the franchise, roadway, roadbed, rails, and rolling-stock of all railroads operated in more than one county; but franchises derived from the United States must not be assessed. All rolling-stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same, and must be made upon the entire railroad within the state. The depots, stations, shops and buildings erected upon the space covered by the right-of-way, and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by the assessor of the county wherein they are situate. After making such assessment, the board shall give at least ten (10) days written notice thereof to such owner or operator, designating therein a time and place for hearing thereon, at which time and place such owner or operator, or any taxpayer, may appear before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised. On or before the second Monday in July, the board shall apportion such assessment to the counties, school districts, cities, towns, and other tax subdivision, in which such railroad is located.

History: Ap. p. Sec. 1675, 5th Div. Comp. Stat. 1887; amd. Sec. 44, p. 89, L. 1891; re-en. Sec. 3738, Pol. C. 1895; re-en. Sec. 2557, Rev. C. 1907; re-en. Sec. 2132, R. C. M. 1921; amd. Sec. 1, Ch. 13, L. 1939. Cal. Pol. C. Sec. 3665.

References

Cited or applied as section 3738, polit-

ical code, in *Hilburn v. St. Paul etc. Ry. Co.*, 23 M 229, 242, 58 P 551; as section 2557, revised codes, in *Northern Pac. Ry. Co. v. Brogan*, 52 M 461, 464, 158 P 820; *State v. North American Car Corporation*, ___ M ___, 164 P 2d 161.

Taxation—390-393.

61 C.J. Taxation §§ 853, 854.

84-803. (2133) Duties of the state board and county assessors respecting statement. The state board of equalization must, within the time mentioned, in the preceding section, transmit by mail to the county assessor of each county, to which such apportionment is made, a statement in detail sufficient for identification and location of the property, showing the assessed value per mile of the same, as fixed by a pro rata distribution per mile of the assessed value of the whole franchise, roadway, roadbed, rails, and rolling-stock of such railroad, within the state, and the amount apportioned to the county and to each taxing subdivision thereof. The county assessor must enter the statement on the assessment roll of the county.

History: En. Sec. 45, p. 90, L. 1891; re-en. Sec. 3739, Pol. C. 1895; re-en. Sec. 2558, Rev. C. 1907; re-en. Sec. 2133, R. C. M. 1921; amd. Sec. 2, Ch. 13, L. 1939. Cal. Pol. C. Sec. 3665.

References

State v. North American Car Corporation, ___ M ___, 164 P 2d 161.

84-804. (2136) Record of assessment and apportionment of railroads. The state board of equalization must keep a record of all such assessments and apportionments.

History: En. Sec. 48, p. 92, L. 1891; re-en. Sec. 3742, Pol. C. 1895; re-en. Sec. 2561, Rev. C. 1907; re-en. Sec. 2136, R. C. M. 1921; amd. Sec. 3, Ch. 13, L. 1939. Cal. Pol. C. Sec. 3666.

References

State v. North American Car Corporation, ___ M ___, 164 P 2d 161.

CHAPTER 9

TELEGRAPH, TELEPHONE, ELECTRIC POWER AND OTHER LINES
ASSESSMENT BY STATE BOARD OF EQUALIZATION

- Section 84-901. Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state board of equalization.
- 84-902. Statement to be transmitted by county assessor to state board.
- 84-903. Hearing before the board.
- 84-904. Hearing for the determination of facts pertaining to assessment.
- 84-905. Assessment of property—apportionment to counties.
- 84-906. Transmission of statement of amount apportioned to counties.
- 84-907. Record of assessment and apportionment of properties.

84-901. (2138) Officers of certain telegraph, telephone, electric power and other lines to furnish statement to state board of equalization. The president, secretary, or managing agent, or such other officer as the state board of equalization may designate, of any corporation, and each person or association of persons owning or operating a telegraph, telephone, electric power or transmission line, natural gas pipe line, oil pipe line, canal, ditch, flume, or other property, other than real estate not included in right of way, and which constitute a single and continuous property throughout more than one county, must, on or before the first Monday of March in each year, furnish the state board of equalization a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding, as follows:

1. The whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association.

2. The total value of the entire property and plant both within and without the state, and the total value of that portion of the same within the state.

3. A complete description of the property within the state, giving the points of entrance into and the points of exit from the state, and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state.

4. Such other information regarding such property as may be required by the state board of equalization.

History: En. Sec. 1, Ch. 49, L. 1919;
re-en. Sec. 2138, R. C. M. 1921; amd.
Sec. 1, Ch. 17, L. 1939.

Taxation—367, 396.
61 C.J. Taxation §§ 822, 861.
51 Am. Jur. 803, 823, Taxation, §§ 906-910, 935-942.

References

Ford Motor Co. v. Linnane, 102 M 325,
334, 57 P 2d 803.

84-902. (2139) Statement to be transmitted by county assessor to state board. The county assessor of every county must, on the first Monday in May of each year, transmit to the state board of equalization a statement showing:

1. The name and address of each corporation, person and association owning or operating any telegraph, telephone, electric power or transmission line, natural gas pipe line, oil pipe line, canal, ditch, flume, or other similar

property in more than one county of the state, whose property, or any part thereof, has been assessed by such county assessor.

2. A complete description of all such property assessed to every such corporation, person, or association, together with the assessed value thereof.

History: En. Sec. 2, Ch. 49, L. 1919; Taxation 364.
re-en. Sec. 2139, R. C. M. 1921; amd. Sec. 61 C.J. Taxation § 818 et seq.
2, Ch. 17, L. 1939.

84-903. (2141) Hearing before the board. After making such assessment, the board shall give at least ten (10) days written notice thereof to the person or persons to whom the assessment is made, designating a time and place for hearing thereon, at which time and place such person or persons, or any taxpayer may appear before the board in person, or otherwise, to show cause why such assessment should be either lowered or raised.

History: En. Sec. 4, Ch. 49, L. 1919; Taxation 407.
re-en. Sec. 2141, R. C. M. 1921; amd. Sec. 61 C.J. Taxation § 863.
5, Ch. 17, L. 1939.

84-904. (2142) Hearing for the determination of facts pertaining to assessment. If any corporation, person or association shall fail, neglect, or refuse to furnish the state board of equalization with a full, true, and correct statement as required, and within the time, by section 84-901, or if the board shall have reason to believe that any such statement furnished the board is incorrect or erroneous in any particular, the board shall order a hearing for the purpose of ascertaining and determining such facts as will enable the board to assess the property of such corporation, person or association in accordance with the provisions of section 84-905. At least ten days' written notice of such hearing shall be given to such corporation, person, or association, and on such hearing the board shall ascertain and determine each and all of the matters and facts which should have been stated in such statement.

History: En. Sec. 5, Ch. 49, L. 1919;
re-en. Sec. 2142, R. C. M. 1921; amd. Sec.
3, Ch. 17, L. 1939.

84-905. (2143) Assessment of property—apportionment to counties. The board must assess all the properties described in section 84-901, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the board shall deem proper.

On or before the second Monday in July, the board shall apportion such assessment to the counties in which the properties are situated.

History: En. Sec. 6, Ch. 49, L. 1919;
re-en. Sec. 2143, R. C. M. 1921; amd. Sec.
4, Ch. 17, L. 1939.

Operation and Effect

This act does not repeal existing statutes on the subject of assessment, but is to be treated as a supplement thereto. The various sections of the act, and of existing acts, are, therefore, in *pari materia*, and are to be construed together. *State v. State Board of Equalization*, 56 M 413, 444, 185 P 708.

Id. This section does not establish an arbitrary rule of assessment, but only requires that the total value of the plant and property, wherever situated, shall be taken into consideration in determining the actual cash value for taxation of that portion of the plant and property situated within this state.

Id. Since the state board of equalization is an agency created by the constitution, with well-defined powers, discretionary in character, and this act does not attempt to direct the board as to the method

or means to be pursued by it in arriving at the actual value of the property of electric power corporations, the supreme court cannot, by writ of mandate, interfere and direct the board how to make the assessment; so long as it is not guilty of fraud, and does not adopt a funda-

mentally wrong principle of assessment, the supreme court cannot interpose, or substitute its judgment for that of such board.

Id. This act does not affect section 84-401, and that section is to be considered in connection with it.

84-906. (2144) Transmission of statement of amount apportioned to counties. The state board of equalization, must, not later than the second Monday of July, transmit or mail to the county assessor of each county to which such apportionment has been made, a statement showing the length of the property in such county; a description of the same sufficient for identification; the assessed value of the same as determined by the board; and the amount apportioned to the county. The county assessor must enter the statement on the assessment-roll or book of the county, and enter the amount of the assessment apportioned to the county in the column of the assessment-roll or book which shows the total value of all property for taxation in the county.

History: En. Sec. 7, Ch. 49, L. 1919;
re-en. Sec. 2144, R. C. M. 1921; amd. Sec.
6, Ch. 17, L. 1939.

Taxation 411.
61 C.J. Taxation § 866.

84-907. (2146) Record of assessment and apportionment of properties. The state board of equalization must keep a record of all such assessments and apportionments.

History: En. Sec. 9, Ch. 49, L. 1919;
re-en. Sec. 2146, R. C. M. 1921; amd. Sec.
7, Ch. 17, L. 1939.

CHAPTER 10

LICENSE TAXES—CARBON BLACK PRODUCERS

- Section 84-1001. Carbon black producers' license.
84-1002. Amount of tax.
84-1003. Time for payment—credit to general fund.
84-1004. Statements to board—contents—time for filing.
84-1005. Records to be kept as required by board.
84-1006. Statement of production—time for making—collection of tax.
84-1007. Unlawful to fail to file or to falsify statement.
84-1008. Board to compute tax if no statement filed—penalty and interest—collection of tax.
84-1009. Penalty for violations.
84-1010. Tax additional to other required taxes and fees.

84-1001. (2380.1) Carbon black producers' license. The term "person," as used in this act, shall mean and include any individual, firm, copartnership, and every corporation, joint stock company, syndicate and association.

The term "carbon black," as used in this act, shall mean and include any kind of carbon black or gas carbon, gas graphite, or any form of carbon produced from natural gas, of whatsoever grade or quality, whether produced by a burning, a heating, a cracking, or any chemical or mechanical or other process whatsoever.

History: En. Sec. 1, Ch. 97, L. 1929.

37 C.J. Licenses § 73.

Licenses 12.

33 Am. Jur. 321, Licenses, generally.

84-1002. (2380.2) Amount of tax. Every person engaged in or carrying on within this state the business of producing or manufacturing for sale, profit or use the commodity or substance known as "carbon black," hereinabove defined, must, for the year 1929, and each year thereafter when engaged in or carrying on any such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business in an amount equal to one-eighth ($\frac{1}{8}$) of one cent (1c) for each pound of carbon black produced or manufactured by such person within the state during such year.

History: En. Sec. 2, Ch. 97, L. 1929. Licenses \S 12, 29.
37 C.J. Licenses \S 73, 116.

84-1003. (2380.3) Time for payment—credit to general fund. Such license tax shall be paid in semi-annual installments for the semi-annual periods ending respectively June thirtieth and December thirty-first, of each year beginning with the semi-annual period ending June 30, 1929, and the amount of the license tax for each semi-annual period shall be paid to the state treasurer within thirty (30) days after the end of each semi-annual period and when received by the state treasurer shall be credited to the general fund of the state.

History: En. Sec. 3, Ch. 97, L. 1929.

84-1004. (2380.4) Statements to board—contents—time for filing. Each and every person engaged in such business in the state of Montana at the time when this act becomes effective must, not later than the thirtieth day of April, 1929, and every person who shall engage in such business at any time after the date when this act becomes effective, must immediately, upon engaging in such business, file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaged in and carrying on such business in this state, giving the place or places of business and the location of the plant or plants for the production of carbon black owned, leased, controlled, or operated by such person; the name and address of the managing agent in this state if an association, corporation, joint stock company or syndicate, or if a firm or co-partnership, the names and addresses of the persons composing the same; if an association, joint stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 97, L. 1929.

84-1005. (2380.5) Records to be kept as required by board. Every such person shall keep a record in such form as the state board of equalization may require of all carbon black produced or manufactured by such person in this state and such records shall at all times during the business hours of the day, be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 97, L. 1929.

84-1006. (2380.6) Statement of production—time for making—collection of tax. (1) Each and every person must, within thirty (30) days after

the semi-annual period ending June 30, 1929, and within thirty (30) days after the end of each following semi-annual period, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the quantity of carbon black produced or manufactured by such person in the state of Montana during each month of such semi-annual period and during the whole of said semi-annual period, together with the total amount due the state as license tax for such semi-annual period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the semi-annual period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint stock company, or syndicate making the same.

(2) Any such person engaged in or carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one carbon black plant in this state, may include all thereof in one statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, the name and post office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statements consecutively, beginning with the number one (1) for each year followed by the year. The state treasurer shall keep a book in such form as shall be approved by the state board of equalization, in which he shall enter each statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return, and the amount of tax, if any, paid by such person, which book shall be designated "State Treasurer's Record of Carbon Black Production License Tax." The state treasurer shall within ten days after the end of each month deliver over to the state board of equalization all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state board of equalization. It shall be the duty of the state board of equalization to examine each of such statements and compute the taxes thereon, and the amount so computed by the board shall be the taxes imposed, assessed against and payable by the person making the statement for the semi-annual period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state board of equalization within ten days after written notice of the amount of the deficiency shall be mailed by the state board of equalization to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 6, Ch. 97, L. 1929.

Licenses—30, 32(1).

37 C.J. Licenses §§ 117, 119 et seq.

84-1007. (2380.7) Unlawful to fail to file or to falsify statement. It shall be unlawful for any such person to fail, neglect, or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 97, L. 1929.

84-1008. (2380.8) Board to compute tax if no statement filed—penalty and interest—collection of tax. If any such person shall fail, neglect, or refuse to file any statement required by the provisions of this act within the time therein required, the state board of equalization shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of carbon black produced or manufactured by such person in this state during such semi-annual period and during each month thereof, and shall determine and fix the amount of the license tax due the state from such person for such semi-annual period, and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five per centum (25%) thereof and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per centum (12%) per annum from the date of the making of such statement by the state board of equalization, until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same.

History: En. Sec. 8, Ch. 97, L. 1929.

84-1009. (2380.9) Penalty for violations. Any violation of any of the provisions of this act shall be deemed a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars (\$1,000.00), or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 9, Ch. 97, L. 1929.

84-1010. (2380.10) Tax additional to other required taxes and fees. The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 10, Ch. 97, L. 1929.

CHAPTER 11

LICENSE TAXES—CEMENT DEALERS

Section	84-1101.	"Person" defined.
	84-1102.	License tax on sales of cement, etc.
	84-1103.	Statement to be filed with board of equalization.
	84-1104.	Quarterly payment of license fee.
	84-1105.	Record of cement received.
	84-1106.	Quarterly statement of produce sold on which no tax paid—payment of tax.
	84-1107.	Duty to file statement.
	84-1108.	Procedure to ascertain tax on failure of statement—penalty.

- 84-1109. Expiration of licenses.
- 84-1110. Invoice to state whether tax paid.
- 84-1111. Issuance and term of license.
- 84-1112. Disposal of license taxes.
- 84-1113. Penalty for violation of act.
- 84-1114. License tax supplemental.

84-1101. (2367) **"Person" defined.** The term "person," as used in this act means and includes every individual, firm, association, joint-stock company, syndicate and corporation.

History: En. Sec. 1, Ch. 16, Ex. L. 1921;
re-en. Sec. 2367, R. C. M. 1921.

84-1102. (2368) **License tax on sales of cement, etc.** Every person who engages in, or carries on the occupation or business in this state of retailing or selling at retail cement, cement plaster, gypsum plaster, or other by-products of cement, must, for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a tax of one dollar, together with an additional sum or amount equal to four cents per barrel of three hundred seventy-six pounds of cement, and five cents per ton of two thousand pounds on cement plaster, gypsum plaster, or other by-products of cement sold by such person during such year, and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state of Montana, under any law of this state.

History: En. Sec. 2, Ch. 16, Ex. L. 1921; re-en. Sec. 2368, R. C. M. 1921; amd. Sec. 2, Ch. 127, L. 1925.

37 C.J. Licenses §§ 77, 116.
33 Am. Jur. 321, Licenses, generally;
47 Am. Jur. 193, Sales and Use Taxes, generally.

Licenses 15(1), 29.

84-1103. (2369) **Statement to be filed with board of equalization.** Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the thirtieth day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if any association, joint-stock company, syndicate or corporation, or if a firm or co-partnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate or corporation, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state board of equalization may require.

History: En. Sec. 3, Ch. 16, Ex. L. 1921; re-en. Sec. 2369, R. C. M. 1921.

84-1104. (2370) **Quarterly payment of license fee.** The said license tax of one dollar shall be paid by each person within thirty days after the end

of the quarter ending March 31st in each year, and such additional license tax of four cents per barrel and twenty cents per ton shall be paid in quarterly installments for the quarters ending March 31st, June 30th, September 30th, and December 31st, in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license tax becoming due for any quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 16, Ex. L. Licenses 32(1).
1921; re-en. Sec. 2370, R. C. M. 1921. 37 C.J. Licenses § 119 et seq.

84-1105. (2371) Record of cement received. Each and every person engaging in or carrying on such occupation in this state shall keep a record showing all cement, cement plaster, gypsum plaster and other by-products of cement purchased or received by or delivered to such person for sale by such persons at retail in this state for the manufacturing or production of which cement, cement plaster, gypsum plaster or other by-products of cement, no person has paid, or assumed liability for the payment of any license tax to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of barrels or tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 16, Ex. L.
1921; re-en. Sec. 2371, R. C. M. 1921.

84-1106. (2372) Quarterly statement of produce sold on which no tax paid—payment of tax. Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of the following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels or tons of such commodities sold by such persons during such quarter for the manufacturing or production of which no person has paid, or assumed liability for the payment of, any license tax to the state of Montana under any laws of this state, together with the total amount due to the state of Montana as license taxes from such person for such quarter; and must within thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company, syndicate or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 16, Ex. L.
1921; re-en. Sec. 2372, R. C. M. 1921.

84-1107. (2373) Duty to file statement. It shall be unlawful for any person to fail, neglect or refuse to file any statement or certificate required

by this act in the manner or within the time required, or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 16, Ex. L.
1921; re-en. Sec. 2373, R. C. M. 1921.

84-1108. (2374) Procedure to ascertain tax on failure of statement—penalty. If any person shall fail, neglect or refuse to make or file the statement required by section 84-1106 within the time required, the state board of equalization shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license taxes due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license taxes and shall add to the amount of such license taxes twenty-five per cent. thereof as a penalty, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto, and interest on the whole thereof at the rate of twelve per cent. per annum, from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 16, Ex. L. Licenses 30, 41.
1921; re-en. Sec. 2374, R. C. M. 1921. 37 C.J. Licenses §§ 117, 145 et seq.

84-1109. (2375) Expiration of licenses. All licenses issued under the provisions of this act shall expire on the thirty-first day of December following the date of issuance.

History: En. Sec. 9, Ch. 16, Ex. L. Licenses 36.
1921; re-en. Sec. 2375, R. C. M. 1921. 37 C.J. Licenses § 66.

84-1110. (2376) Invoice to state whether tax paid. Every person engaged in the business in this state of manufacturing or producing cement, cement plaster, gypsum plaster or other by-product of cement shall make out and deliver to every person to whom any of such commodities are sold or delivered by such person, an invoice covering the commodity or commodities so sold or delivered on which invoice shall be stated whether or not such person has paid, or assumes liability for the payment of the license tax for manufacturing or producing the same, to the state of Montana, under any laws of this state.

History: En. Sec. 10, Ch. 16, Ex. L.
1921; re-en. Sec. 2376, R. C. M. 1921.

84-1111. (2377) Issuance and term of license. Upon payment of the license tax for the first quarter in each year by any person engaging in or carrying on the occupation of selling cement, cement plaster, gypsum plaster or other by-products of cement at retail in this state, the state treasurer shall issue to the person paying the same a license which shall recite therein that the same shall be and remain in full force and effect for the whole of such year, provided the person to whom it is issued shall thereafter make all payments of quarterly installments of license taxes as the same may become

due, and such license shall be kept conspicuously posted in the place of business of such person.

History: En. Sec. 11, Ch. 16, Ex. L.
1921; re-en. Sec. 2377, R. C. M. 1921.

84-1112. (2378) Disposal of license taxes. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 12, Ch. 16, Ex. L. Licenses 33.
1921; re-en. Sec. 2378, R. C. M. 1921. 37 C.J. Licenses § 129.

84-1113. (2379) Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 13, Ch. 16, Ex. L. Licenses 40.
1921; re-en. Sec. 2379, R. C. M. 1921. 37 C.J. Licenses §§ 151 et seq., 172.

84-1114. (2380) License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 14, Ch. 16, Ex. L. Licenses 28.
1921; re-en. Sec. 2380, R. C. M. 1921. 37 C.J. Licenses § 114.

CHAPTER 12

LICENSE TAXES—CEMENT AND GYPSUM PRODUCERS

- Section 84-1201. "Person" defined.
84-1202. License tax on producers and importers of gypsum and cement.
84-1203. "Import" defined.
84-1204. Quarterly payment of tax.
84-1205. Statements to be filed with board of equalization.
84-1206. Manufacturers to keep records.
84-1207. Quarterly statement and payment of tax.
84-1208. Duty to file statement.
84-1209. Procedure to ascertain tax on failure of statement—penalty.
84-1210. Disposal of taxes.
84-1211. Penalty for violation of act.
84-1212. License tax supplemental.

84-1201. (2356) "Person" defined. The term "person," as used in this act, shall mean and include any individual, firm, co-partnership, and every corporation, joint-stock company and association.

History: En. Sec. 1, Ch. 15, Ex. L.
1921; re-en. Sec. 2356, R. C. M. 1921.

84-1202. (2357) License tax on producers and importers of gypsum and cement. Every person engaged in or carrying on the business in the state of Montana of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum, and any person who imports into this state any such products for sale or use, must, for the year 1945 and each year thereafter, when engaged in or carrying on such business in this state, pay to the state board of equalization for the use of the state of Montana, a license tax for engaging in and carrying

on such business in the state of Montana in an amount equal to the following sums:

1. For each and every barrel of cement containing 376 pounds produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove enumerated, or imported by such person into this state for sale or use, four (4) cents.

2. For each and every ton of 2000 pounds of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named, or imported by such person into this state for such sale or use, five (5) cents.

3. The words "products of cement or gypsum" as used in this section shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than fifty per cent (50%) by weight. No double taxation of either cement, gypsum or the products thereof is imposed by this act.

History: En. Sec. 2, Ch. 15, Ex. L. 1921; re-en. Sec. 2357, R. C. M. 1921; amd. Sec. 1, Ch. 127, L. 1925; amd. Sec. 1, Ch. 166, L. 1931; amd. Sec. 1, Ch. 192, L. 1945.

Before Amendment Held Not Applicable to Wallboard

As against the state's contention that "other products" as used in this section by implication included gypsum wallboard, held, under doctrine of ejusdem generis the legislature meant gypsum products made and handled like plaster, the administrative measurements as used in the

act being only barrels and tons and not square feet as wallboard is handled and sold, the uncertainties being resolved in favor of the taxpayer. Tax statutes must be clear and specific with nothing left to speculation and conjecture, and rate and amount must be fixed. An undetermined tax is no tax. *United States Gypsum Co. v. State Board of Equalization*, 116 M 275, 278, 149 P 2d 774.

Licenses—12, 15(1), 29.

37 C.J. Licenses §§ 73, 77, 116.

33 Am. Jur. 321, Licenses, generally.

84-1203. (2357.1) "Import" defined. The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum, as the same are defined in section 84-1202, shipped or transported into this state from point of origin without this state.

History: En. Sec. 2, Ch. 166, L. 1931; amd. Sec. 2, Ch. 192, L. 1945.

84-1204. (2358) Quarterly payment of tax. Such annual license tax, as imposed by section 84-1202, shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th and December 31st, of each year, beginning with the quarter ending March 31, 1945, and the amount of such license tax due for each such quarter shall be paid to the state board of equalization within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 15, Ex. L. 1921; re-en. Sec. 2358, R. C. M. 1921; amd. Sec. 3, Ch. 192, L. 1945.

84-1205. (2359) Statements to be filed with board of equalization. Each and every person engaged in or carrying on the business specified in section 84-1202 at the date when this act becomes effective, must, not later than the thirtieth day of April, 1945 and every person who shall, after the date this act becomes effective, engage in such business, must immediately

upon engaging therein, file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization which shall contain the name under which such person is engaging in and carrying on such business within this state, giving the name of the place or places of business or location of plants or factories within this state; the name and address of the managing agent in this state; if a corporation, joint-stock company or association, or if a firm or co-partnership, the names and addresses of the persons composing the same; if an association, joint-stock company or corporation, under the laws of what state organized, its principal place of business and the name and addresses of its principal officers; and such other information as the state board of equalization may deem necessary.

History: En. Sec. 4, Ch. 15, Ex. L.
1921; re-en. Sec. 2359, R. C. M. 1921;
amd. Sec. 4, Ch. 192, L. 1945.

84-1206. (2360) Manufacturers to keep records. Every such person shall keep a record in such form as the state board of equalization may require of all cement, gypsum, gypsum plaster, stucco, wallboard, land plaster or other products of cement or gypsum manufactured or produced by such person in this state. Such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 15, Ex. L.
1921; re-en. Sec. 2360, R. C. M. 1921;
amd. Sec. 5, Ch. 192, L. 1945.

84-1207. (2361) Quarterly statement and payment of tax. Each and every person must, within thirty days after the quarter ending March 31, 1945, and within thirty days after the end of each following quarter, make out, on forms prescribed by the state board of equalization, and deliver to the state board of equalization, a statement showing the total number of barrels or tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in section 84-1202 or imported by such person into the state of Montana for sale or use, during each month of such quarter and during the whole quarter, and such other information as said board may require, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state board of equalization, pay to the state board of equalization the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, or joint-stock company making the same. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state, may include all thereof in one statement.

History: En. Sec. 6, Ch. 15, Ex. L.
1921; re-en. Sec. 2361, R. C. M. 1921;
amd. Sec. 6, Ch. 192, L. 1945.

Licenses 30, 32(1).
37 C.J. Licenses §§ 117, 119 et seq.

84-1208. (2362) Duty to file statement. It shall be unlawful for any person to fail, neglect, or refuse to file any statement or certificate required by section 84-1207 in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 15, Ex. L. 1921; re-en. Sec. 2362, R. C. M. 1921; amd. Sec. 7, Ch. 192, L. 1945.

84-1209. (2363) Procedure to ascertain tax on failure of statement—penalty. If any such person shall fail, neglect or refuse to file any statement required by section 84-1207 within the time required, or shall fail to pay the tax required by this act on or before the date such payment is due, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may, regarding the amounts of the respective articles or products enumerated in section 84-1202 manufactured or produced by such person within this state or imported by such person into the state, during such quarter, and during each month thereof, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement, showing the same, and shall add to the amount of such license taxes, a penalty of twenty-five per cent thereof and deliver such statement to the attorney general, who shall proceed to collect the amount of the license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state board of equalization, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to recover the same.

History: En. Sec. 8, Ch. 15, Ex. L. of Equalization, 116 M 275, 277, 149 P 2d 1921; re-en. Sec. 2363, R. C. M. 1921; 774.
amd. Sec. 8, Ch. 192, L. 1945.

References Licenses⇒41.

United States Gypsum Co. v. State Board 37 C.J. Licenses § 145 et seq.

84-1210. (2364) Disposal of taxes. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 15, Ex. L. Licenses⇒33.
1921; re-en. Sec. 2364, R. C. M. 1921. 37 C.J. Licenses § 129.

84-1211. (2365) Penalty for violation of act. Any violation of the provisions of sections 84-1202, 84-1203, 84-1204, 84-1205, 84-1206, 84-1207, 84-1208, 84-1209 or 84-1211, or either or any thereof, shall be deemed a misdemeanor, and shall be punished by a fine not exceeding five hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 15, Ex. L. Licenses⇒40.
1921; re-en. Sec. 2365, R. C. M. 1921; 37 C.J. Licenses §§ 151 et seq., 172.
amd. Sec. 9, Ch. 192, L. 1945.

84-1212. (2366) License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 15, Ex. L.
1921; re-en. Sec. 2366, R. C. M. 1921.

Licenses \Rightarrow 28.
37 C.J. Licenses § 114.

CHAPTER 13

LICENSE TAXES—COAL MINES

- Section 84-1301. "Person" defined.
84-1302. Coal mines license tax—amount—exceptions.
84-1303. Payment of annual license tax.
84-1304. Mine operators to file statements.
84-1305. Records to be kept by mine operators.
84-1306. Quarterly statements of mine operators—payment of license tax.
84-1307. Penalty for neglect or false statement.
84-1308. Procedure to determine tax—penalty—tax lien.
84-1309. Disposal of license taxes.
84-1310. Penalty for violation of act.
84-1311. License taxes supplemental.

84-1301. (2316) **"Person" defined.** The term "person" as used in this act, shall mean and include any individual, firm, co-partnership, and every corporation, joint-stock company and association.

History: En. Sec. 1, Ch. 155, L. 1921;
re-en. Sec. 2316, R. C. M. 1921.

84-1302. (2317) **Coal mines license tax—amount—exceptions.** Every person engaged in or carrying on the business of coal mining, or engaged in the business of working or operating any mine or mining property, in the state of Montana, from which marketable or merchantable coal of any kind is mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1921, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work and operations, in an amount equal to five cents per ton for each and every ton in excess of fifty thousand tons of marketable or merchantable coal mined, extracted or produced by such person in the state of Montana and shipped by such person during such year, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed, by any person to mine coal, or to work in or about, or in connection with any coal mine or coal property or business, to pay such license taxes, nor shall any work required to be done in prospecting for, or in developing, or in opening up any coal mine or mining property, be deemed to be the carrying on of a coal mining business, or the engaging in the business of working or operating of a coal mine; provided, further, that if during any such work of developing or opening up any coal mine or coal mining property, any marketable or merchantable coal shall be mined, extracted or produced and sold, then the same shall be deemed the carrying on of a coal mining business and the engaging in the business of working and operating a coal mine.

History: En. Sec. 2, Ch. 155, L. 1921; re-en. Sec. 2317, R. C. M. 1921; amd. Sec. 1, Ch. 200, L. 1939.

Tax by Cities

Section 84-1402 requires every coal dealer in the state to pay annually to the state a license of one dollar and in addition thereto five cents per ton for every ton of coal sold by him during any one year upon which the mine license fee exacted by this section has not been paid by the mine operator. Under section 11-901, subdivision 3, the power of cities or towns to license an industry or business is limited to an amount not to exceed the sum required by the state to be paid to

it by the same business. Held, that a city ordinance exacting a fee of one dollar from coal dealers, and in addition five cents per ton for every ton of coal sold, without incorporating therein the clause limiting the payment of the five cents to coal upon which the mine license fee exacted by this section had not been paid to the state, was invalid as in excess of the power of the city to impose. *State ex rel. City of Butte v. Police Court*, 65 M 94, 98, 210 P 1059.

Licenses⇒11(1), 29.

37 C.J. Licenses §§ 73, 116.

33 Am. Jur. 321, Licenses, generally.

84-1303. (2318) Payment of annual license tax. Such annual license tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 30th, September 30th, and December 31st in each year, beginning with the quarter ending March 31, 1921, and the amount of the license tax due for each such quarter shall be paid to the state treasurer within thirty days after the end of each such quarter.

History: En. Sec. 3, Ch. 155, L. 1921; re-en. Sec. 2318, R. C. M. 1921.

84-1304. (2319) Mine operators to file statements. Each and every person engaged in or carrying on the business of coal mining, or engaged in the business of working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, at the date when this act becomes effective, must, not later than the thirtieth day of April, 1921, and every person who shall, after the date this act becomes effective, engage in the business of coal mining or engage in working or operating any mine or mining property in the state of Montana, from which coal of any kind is mined, must, immediately upon engaging in such business, work or operations, file with the state board of equalization, a certificate and statement, on forms prescribed by such state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business, work and operations, within this state, giving the place or places of business or location of the mine or mining property; the name and address of the managing agent in this state, if an association, joint-stock company, or corporation, or if a firm or partnership, the names and addresses of the persons composing the same; if an association or corporation, under the laws of what state organized, its principal place of business and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 155, L. 1921; re-en. Sec. 2319, R. C. M. 1921.

Licenses⇒30.

37 C.J. Licenses § 117.

84-1305. (2320) Records to be kept by mine operators. Every such person shall keep a record, in such form as the state board of equalization may require, of all coal mined, extracted or produced, and of all coal sold or otherwise disposed of by such person, and such records shall at all times dur-

ing the business hours of the day be subject to inspection by the state board of equalization, its members, agents and employees.

History: En. Sec. 5, Ch. 155, L. 1921;
re-en. Sec. 2320, R. C. M. 1921.

84-1306. (2321) Quarterly statements of mine operators—payment of license tax. Each and every such person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons, of two thousand pounds each, of marketable or merchantable coal mined, extracted, or produced by such person during such quarter, from all coal mines or coal mining property worked or operated by such person, and shipped by such person, or used by such person for any purpose except in connection with the operating of the mine or mining property from which the same was mined, extracted or produced, or delivered by such person to any other person for shipment, sale or use by such other person, together with the total amount due to the state as license tax for such quarter; and must within such thirty days, and at the time of delivering such duplicate statement to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana, for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state, of the association, joint-stock company, or corporation making the same. Any person engaged in working or operating more than one coal mine may include all coal mines worked or operated by him in one statement. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 155, L. 1921;
re-en. Sec. 2321, R. C. M. 1921.

84-1307. (2322) Penalty for neglect or false statement. It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 7, Ch. 155, L. 1921;
re-en. Sec. 2322, R. C. M. 1921.

84-1308. (2323) Procedure to determine tax—penalty—tax lien. If any person shall fail, neglect or refuse to file any statement required by section 84-1306, or shall fail to make payment of such license tax within the time therein required, the state board of equalization, shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of tons of marketable or merchantable coal mined, extracted or produced by such person, during such quarter and shipped or used by such person, or delivered by such person to any other person for shipment, sale or use by such other person, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter, and shall make out a statement in triplicate, showing the same, and

shall add to the amount of such license taxes, ten per centum (10%) thereof as a penalty, and one of such statements shall be filed in the office of the county clerk and recorder of the county in which the coal was produced and one of such statements delivered to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof, at the rate of eight per centum (8%) per annum from the date of making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general or any county attorney to commence, and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

The license tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and upon the mine from which the coal was produced, which lien shall attach on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 8, Ch. 155, L. 1921; Licenses⇒30, 31, 41.
re-en. Sec. 2323, R. C. M. 1921; amd. Sec. 37 C.J. Licenses §§ 117, 118, 145 et seq.
1, Ch. 74, L. 1931; amd. Sec. 2, Ch. 200, L. 1939.

84-1309. (2324) Disposal of license taxes. All license taxes collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 9, Ch. 155, L. 1921; Licenses⇒33.
re-en. Sec. 2324, R. C. M. 1921. 37 C.J. Licenses § 129.

84-1310. (2325) Penalty for violation of act. Any violation of any of the provisions of the act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 10, Ch. 155, L. 1921; Licenses⇒40.
re-en. Sec. 2325, R. C. M. 1921. 37 C.J. Licenses §§ 151 et seq., 172.

84-1311. (2326) License taxes supplemental. The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 155, L. 1921; Licenses⇒28.
re-en. Sec. 2326, R. C. M. 1921. 37 C.J. Licenses § 114.

CHAPTER 14

LICENSE TAXES—COAL RETAILERS

- Section 84-1401. "Person" and "mine operators" defined.
84-1402. License to retail coal—fees.
84-1403. Retailers to file statements—contents.
84-1404. Payment of license fees.
84-1405. Record of coal sold for retail.
84-1406. Statement of coal sold—form and filing.
84-1407. Penalty for failure to file statement.
84-1408. Procedure to determine tax on failure to file statement—penalty.

- 84-1409. Expiration of license.
- 84-1410. Full weight of coal.
- 84-1411. Misrepresentation in sale forbidden.
- 84-1412. Revocation of license.
- 84-1413. Invoice of coal.
- 84-1414. State treasurer to issue license.
- 84-1415. Disposal of license fees.
- 84-1416. Penalty for violation of act.
- 84-1417. Fees additional to other taxes.

84-1401. (2327) "Person" and "mine operators" defined. The term "person," as used in this act means and includes every individual, firm, association, joint-stock company, syndicate, and corporation; and the term "mine operator" as used in this act means every person who engages in the business in this state of working or operating any mine or mining property from which coal of any kind is mined, extracted or produced, whether such person shall engage in such business as owner, lessee, trustee, receiver, or in any other capacity, but shall not mean or include a laborer or employee employed to work in or about any such mine or mining property.

History: En. Sec. 1, Ch. 3, Ex. L. 1921; Licenses 15(1).
 re-en. Sec. 2327, R. C. M. 1921. 37 C.J. Licenses § 77.

84-1402. (2328) License to retail coal—fees. Every person who engages in or carries on the occupation or business in this state of retailing, or selling at retail, coal of any kind must, for the year 1921, and annually each year thereafter when engaged in such occupation or business, procure from the state treasurer a license to engage in and carry on such occupation or business in this state, and shall annually pay to the state treasurer for such license a fee of one dollar, together with an additional sum or amount equal to five cents a ton for each and every ton of coal containing two thousand pounds sold by such person during such year and for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state.

History: En. Sec. 2, Ch. 3, Ex. L. 1921; Licenses 15(1), 29.
 re-en. Sec. 2328, R. C. M. 1921. 37 C.J. Licenses § 116.
 33 Am. Jur. 321, Licenses, generally.

References

State ex rel. City of Butte v. Police
 Court, 65 M 94, 210 P 1059.

84-1403. (2329) Retailers to file statements—contents. Each and every person engaged in or carrying on such occupation or business in the state of Montana at the date when this act becomes effective must, not later than the 30th day of April, 1921, and every person who shall engage in or carry on such occupation or business after the date when this act becomes effective must immediately after engaging in such occupation or business, make out and file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such occupation and business in this state, giving the location of each place of business of such person, the name and address of the managing agent in this state, if an association, joint-stock company, syndicate, or corporation; or, if a firm or co-partnership the names and addresses of the persons composing the same; if an association, joint-stock company, syndicate, or cor-

poration, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers, and such other information as the state board of equalization may require.

History: En. Sec. 3, Ch. 3, Ex. L. 1921;
re-en. Sec. 2329, R. C. M. 1921.

84-1404. (2330) Payment of license fees. The said license fee of one dollar shall be paid by each person within thirty days after the end of the quarter ending March 31st in each year, and such additional license fee of five cents per ton shall be paid in quarterly instalments for the quarters ending March 31st, June 30th, September 30th and December 31st in each year, beginning with the quarter ending March 31, 1921, and the total amount of such license fees becoming due for any quarter shall be paid to the state treasurer within thirty days after the end of the quarter for which the same is due.

History: En. Sec. 4, Ch. 3, Ex. L. 1921;
re-en. Sec. 2330, R. C. M. 1921.

References

State ex rel. City of Butte v. Police Court, 65 M 94, 99, 210 P 1059.

Licenses⇒32(1).
37 C.J. Licenses § 119 et seq.

84-1405. (2331) Record of coal sold for retail. Each and every person engaging in or carrying on such occupation or business in this state shall keep a record showing all coal purchased or received by or delivered to such person for sale by such person at retail in this state for the mining of which coal no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, which record shall show the date of each purchase or delivery, the number of tons contained therein, and the name of the person from whom the same was purchased or received, which records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents, or employees.

History: En. Sec. 5, Ch. 3, Ex. L. 1921;
re-en. Sec. 2331, R. C. M. 1921.

Licenses⇒30.
37 C.J. Licenses § 117.

84-1406. (2332) Statement of coal sold—form and filing. Each and every person must, within thirty days after the quarter ending March 31, 1921, and within thirty days after the end of each following quarter, make out in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of tons of coal sold by such person during such quarter for the mining of which no "mine operator" has paid, or assumed liability for the payment of, any license fee to the state of Montana under any law of this state, together with the total amount due to the state of Montana as license fees from such person for such quarter; and must within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license fees shown by such statement to be due to the state of Montana for the quarter for which said statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, joint-stock company,

syndicate, or corporation making the same. The state treasurer shall file one copy of such statement in his office and deliver the other copy thereof to the state board of equalization.

History: En. Sec. 6, Ch. 3, Ex. L. 1921;
re-en. Sec. 2332, R. C. M. 1921.

84-1407. (2333) Penalty for failure to file statement. It shall be unlawful for any person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time required, or to make any such statement or certificate false in any particular.

History: En. Sec. 7, Ch. 3, Ex. L. 1921;
re-en. Sec. 2333, R. C. M. 1921.

84-1408. (2334) Procedure to determine tax on failure to file statement—penalty. If any person shall fail, neglect, or refuse to make or file the statement required by section 84-1406, or shall fail to make payment of such license tax within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the matters required to be set forth in such statement, and shall fix and determine the amount of the license fees due from such person for such quarter, and shall make out a statement in duplicate showing such matters, and the amount of such license fees, and shall add to the amount of such license fees twenty-five per centum (25%) thereof as a penalty, and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license fees, with the penalty added thereto, and interest on the whole thereof at the rate of eight per centum (8%) per annum from the date of the making of such statement by the state board of equalization until paid. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

History: En. Sec. 8, Ch. 3, Ex. L. 1921; Licenses↔30, 41.
re-en. Sec. 2334, R. C. M. 1921; amd. Sec. 37 C.J. Licenses §§ 117, 145 et seq.
2, Ch. 74, L. 1931.

84-1409. (2335) Expiration of license. All licenses issued under the provisions of this act shall expire on the 31st day of December following the date of issuance.

History: En. Sec. 9, Ch. 3, Ex. L. 1921; Licenses↔36.
re-en. Sec. 2335, R. C. M. 1921. 37 C.J. Licenses § 66.

84-1410. (2336) Full weight of coal. In all sales of coal the person selling the same must give to the purchaser full weight at the rate of two thousand pounds to the ton.

History: En. Sec. 10, Ch. 3, Ex. L. 1921; Weights and Measures↔5.
re-en. Sec. 2336, R. C. M. 1921. 68 C.J. Weights and Measures § 2 et seq.

Cross-Reference

Full weight required, secs. 50-603, 94-1904.

84-1411. (2337) Misrepresentation in sale forbidden. No person, association, firm, joint-stock company, syndicate or corporation shall misrepresent to the public respecting any coal offered for sale, nor sell coal of any

particular name or from any particular mine under the name or designation of another coal or mine.

History: En. Sec. 11, Ch. 3, Ex. L. Sales↔48¾.
1921; re-en. Sec. 2337, R. C. M. 1921. 55 C.J. Sales § 11.

84-1412. (2338) Revocation of license. The state board of equalization shall have the power to revoke the license of any person upon the conviction of such person of the violation of any of the provisions contained in the two preceding sections, but no revocation shall be made until due notice of the intention of the state board of equalization so to do shall have been given to such person and such person afforded an opportunity to appear before such state board of equalization and show cause why such license should not be revoked.

History: En. Sec. 12, Ch. 3, Ex. L. Licenses↔38.
1921; re-en. Sec. 2338, R. C. M. 1921. 37 C.J. Licenses § 109 et seq.

84-1413. (2339) Invoice of coal. Every "mine operator" shall make out and deliver to every person to whom any coal is sold or delivered by such "mine operator" an invoice covering the coal so sold or delivered, on which invoice shall be stated whether or not such "mine operator" has paid, or assumes liability for the payment of the license fee for mining the same, to the state of Montana, under any law of this state.

History: En. Sec. 13, Ch. 3, Ex. L.
1921; re-en. Sec. 2339, R. C. M. 1921.

84-1414. (2340) State treasurer to issue license. Upon payment of the license fee for the first quarter in each year by any person engaging in or carrying on the occupation of selling coal at retail in this state, the state treasurer shall issue to the person paying the same a license which shall recite therein that the same shall be and remain in full force and effect for the whole of such year, provided the person to whom it is issued shall thereafter make all payments of quarterly instalments of license fees as the same may become due, and such license shall be kept conspicuously posted in the place of business of such person.

History: En. Sec. 14, Ch. 3, Ex. L. Licenses↔23.
1921; re-en. Sec. 2340, R. C. M. 1921. 37 C.J. Licenses § 99.

84-1415. (2341) Disposal of license fees. All license fees collected under the provisions of this act shall be deposited to the credit of the general fund of the state.

History: En. Sec. 15, Ch. 3, Ex. L. Licenses↔33.
1921; re-en. Sec. 2341, R. C. M. 1921. 37 C.J. Licenses § 129.

84-1416. (2342) Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punishable by a fine of not more than one thousand dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 16, Ch. 3, Ex. L. Licenses↔40.
1921; re-en. Sec. 2342, R. C. M. 1921. 37 C.J. Licenses §§ 151 et seq., 172.

84-1417. (2343) Fees additional to other taxes. The license fees herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 17, Ch. 3, Ex. L. Licenses 28.
 1921; re-en. Sec. 2343, R. C. M. 1921. 37 C.J. Licenses § 114.

CHAPTER 15

LICENSE TAXES—CORPORATION LICENSE TAX

- Section 84-1501. Corporation license tax—organizations exempt therefrom.
 84-1502. Deductions allowed in computing income.
 84-1503. Segregation of income within and without state.
 84-1504. Computation of license tax—return of net income to be filed.
 84-1805. Assessment of tax—payment—lien of tax.
 84-1506. Penalty for refusal to make return or rendering false or fraudulent return.
 84-1507. Returns and corrections to be public records.
 84-1508. Understatement in returns—proceedings.
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 84-1511. Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy.
 84-1512. Where omission deemed committed—certificate of board as evidence.
 84-1513. Action in case of false or fraudulent returns.
 84-1514. Delinquency—suspension—forfeiture—dissolution.
 84-1515. Reviver of corporation after suspension or forfeiture.
 84-1516. Penalty for violation of act.
 84-1517. Failure to make return—estimate and investigation of net income.
 84-1518. Reciprocity with federal and other states' revenue officers regarding returns.
 84-1519. Repealing and saving clause.

84-1501. (2296) Corporation license tax—organizations exempt therefrom. The term corporation includes associations, joint stock companies, common law trusts and business trusts which do business in an organized capacity whether created under and pursuant to state laws, agreements, declarations of trust. Every corporation, except as hereinafter provided, organized and existing under the laws of the state of Montana and engaged in business therein, shall annually pay to the state treasurer, as a license fee for carrying on business in said state of Montana, three (3) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock or from net earnings of resident corporations whose net income is taxable under this title; and every corporation, except as hereinafter provided, organized and existing under the laws of any other state or country, or the United States, and engaged in business in the state of Montana, shall annually pay for the exclusive use and benefit of the state of Montana a license fee for carrying on its business in the state of Montana of three (3) per centum upon the total net income received by such corporation in the preceding fiscal year from all sources within the state of Montana, including the interest on bonds, notes or other interest bearing obligations of residents, corporate or otherwise, and including the income derived from dividends on capital stock, or from net earnings of resident corporations, joint stock companies or associations whose net income is taxable under this title. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than five dollars (\$5.00).

84-1501
 (2296 RCM'95)
 Ref. to
 SL '49, C. 199
 Sec. 5, P. 478

There shall not be taxed under this title any income received by any—

First. Labor, agricultural or horticultural organization;

Second. Mutual savings bank not having a capital stock represented by shares;

Third. Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

Fourth. Domestic building and loan associations or cooperative bank without capital stock, organized and operated for mutual purposes and without profit;

Fifth. Cemetery company owned and operated exclusively for the benefit of its members;

Sixth. Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

Seventh. Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

Eighth. Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

Ninth. Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

Tenth. Farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation company, mutual or cooperative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

Eleventh. Labor, agricultural or horticultural cooperatives organized and operated on a cooperative basis; (a) for the purpose of marketing the products of members or other producers, and turning back to them the proceeds of sales, less the necessary marketing expenses, on the basis of either the quantity or the value of the products furnished by them, or (b) for the purpose of purchasing supplies and equipment for the use of members or other persons, and turning over such supplies and equipment to them at actual cost, plus necessary expenses. Exemption shall not be denied any such association because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the state of incorporation or 6 per centum per annum, whichever is greater, on the value of the consideration for which the stock was issued, and if substantially all such stock (other than non-voting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the association, upon dissolution or otherwise, beyond the fixed dividends) is owned by producers who market their products or purchase their supplies and equipment through the association; nor shall exemption be denied any such association because there is accumulated and maintained by it a

reserve required by state law or a reasonable reserve for any necessary purpose. Such an association may market the products of nonmembers in an amount the value of which does not exceed the value of the products marketed for members, and may purchase supplies and equipment for nonmembers in an amount the value of which does not exceed the value of the supplies and equipment purchased for members, provided the value of the purchases made for persons who are neither members nor producers does not exceed 15 per centum of the value of all its purchases. Business done with the United States, state of Montana or its political subdivisions shall be exempt under this act. Any cooperative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a cooperative basis.

Twelfth. Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

Thirteenth. In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function.

History: En. Sec. 1, Ch. 79, L. 1917; Subd. 16 amd. Sec. 1, Ch. 64, L. 1921; re-en. Sec. 2296, R. C. M. 1921; amd. Sec. 1, Ch. 166, L. 1933; amd. Sec. 1, Ch. 29, L. 1937; amd. Sec. 1, Ch. 92, L. 1937.

Cross-Reference

Rural electric cooperatives exempt from excise taxes, sec. 14-528.

Constitutionality

This act is not unconstitutional because of alleged discrimination between corporations whose business is and those whose business is not wholly within this state, such discrimination being necessary to attain reasonable equality of burdens between the two. *Equitable Life Assur. Co. v. Hart*, 55 M 76, 89, 173 P 1062.

Income from Lease on Indian Land

A corporation extracting oil from lands within the Blackfeet Indian reservation under lease given by the tribe, was subject to the payment of corporation license tax. *British-American Oil Producing Co. v. State Board of Equalization*, 101 M 293, 302, 54 P 2d 129. See also *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 101 M 268, 290, 54 P 2d 117.

Insurance Corporations

The purpose of this act being the imposition of a license fee of one per cent upon the net income of every corporation in the state for the privilege of doing business as such, without regard to the character of the business, insurance corporations were intended to be within its

purview. *Equitable Life Assur. Co. v. Hart*, 55 M 76, 84, 173 P 1062.

Id. This act did not operate to repeal section 40-1302, requiring insurance corporations to pay certain license fees before commencing to do business in this state.

Id. The license fee required of insurance corporations by this act and section 40-1302 do not constitute a case of double taxation, the impositions, though upon the same persons, not being for the same thing.

Interest-bearing Obligations of Nonresidents

Held, in an action by a domestic life insurance company to recover a portion of a corporation license tax imposed by this section, and paid under protest, that the section by imposing the tax upon the net income received by plaintiff "from all sources, including interest on bonds, notes or other interest-bearing obligations of residents, corporate or otherwise" of the state, under the doctrine of *expressio unius est exclusio alterius* excluded interest accruing on obligations of nonresidents. *Montana Life Insurance Co. v. Shannon*, 106 M 500, 504, 78 P 2d 946.

Operation and Effect

Where a government contractor's liability to make a refund to the government was certain under the laws relating to renegotiation, the estimated amount of the contractor's liability thereunder was an allowable deduction as an expense incurred in computing the state corporation license tax of the contractor on the ac-

crual basis although the exact amount was not known nor presently due during the taxable year but such amount was determined later and the adjustment made. *Birch Co. v. Porter*, 117 M 232, 236, 157 P 2d 777.

Co. v. Junod, 73 M 392, 395, 236 P 1080; *O'Connell v. State Bd. of Equalization*, 95 M 91, 136, 25 P 2d 114; *State v. J. C. Maguire Construction Co. et al.*, 113 M 324, 328, 125 P 2d 433.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090; *Cottonwood Coal*

Taxation ⇨ 117.

61 C.J. *Taxation* § 241 et seq.

27 Am. Jur. 399 et seq., *Income Taxes*, §§ 161 et seq.

84-1502. (2297) Deductions allowed in computing income. In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid within the year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity.

2. All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear of property arising out of its use or employment in the business or trade. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case; such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the state board of equalization; provided, however, for the purpose of determining depletion, depreciation and obsolescence, in all cases not expressly provided for in this act, the provisions of the most recent act of congress of the United States, commonly known as the federal income tax act, and the rules, regulations and decisions thereunder, insofar as same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state board of equalization.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Taxes, other than taxes imposed by this act, paid within the year imposed by authority of the United States or its territories or possessions, or any foreign country, or under the authority of this state, or any county, school district or municipality or other taxing subdivisions of this state, not including those assessed against local benefits.

6. In the case of insurance companies, in addition to the above, the net addition required by law to be made within the year to reserve funds, and paid within the year on policy and annuity contracts.

History: En. Sec. 2, Ch. 79, L. 1917; amd. Sec. 1, Ch. 69, L. 1919; amd. Sec. 1, Ch. 258, L. 1921; re-en. Sec. 2297, R. C. M. 1921; amd. Sec. 2, Ch. 166, L. 1933; amd. Sec. 1, Ch. 133, L. 1947.

Deductions

This section, providing for a corporation license fee, allows certain deductions from the gross income of a corporation in determining its net income upon which the fee is to be computed, if "engaged in business" wholly in Montana. Plaintiff, a foreign corporation engaged in the business of coal mining in this state, maintained its general office in Minneapolis, where the meetings of the stockholders and directors were held and from where the business was directed, to which office moneys were sent for deposit and where it received interest and dividends from invested funds and disbursed same to its stockholders. The state treasurer, claiming that the corporation by reason of the above facts was partly engaged in business in Montana and partly in Minnesota, and therefore subject to a higher fee, refused to allow the deductions. Held, in plaintiff's action to recover the excess fee paid under protest, that by doing the things done by the company at its general office in Minneapolis it was not "engaged in business" in the state of Minnesota within the meaning of this section, was therefore not partly engaged in business in this state and partly in Minnesota but wholly engaged in the business of coal mining in Montana, and hence entitled to the deductions claimed. *Cottonwood Coal Co. v. Junod*, 73 M 392, 395, 236 P 1080.

Where a government contractor's liability to make a refund to the government was certain under the laws relating to renegotiation, the estimated amount of the contractor's liability thereunder was an

allowable deduction as an expense incurred in computing the state corporation license tax of the contractor on the accrual basis although the exact amount was not known nor presently due during the taxable year but such amount was determined later and the adjustment made. *Birch Co. v. Porter*, 117 M 232, 236, 157 P 2d 777.

Id. Keeping accounts and making returns on the accrual basis, as distinguished from cash basis import that it is the right to receive and not the actual receipt that determines inclusion of the amount in gross income.

Deductions and Expense Allowed Cooperatives

Dividends paid on capital stock outstanding are not a proper deduction in determining the net income of a co-operative association organized under secs. 14-201 et seq., for taxation purposes, such dividends being neither an expense nor a payment of interest on indebtedness, but patronage dividends which it must pay under sec. 14-213 in apportioning its earnings, are in effect refunds or rebates to customers whether stockholders or not, and are to be treated as a necessary expense in computing net income upon which to pay a license tax. *Gallatin Farmers Co. v. Shannon*, 109 M 155, 158, 93 P 2d 953.

References

Cited or applied as section 2, chapter 79, laws of 1917, before amendment, in *Equitable Life Assur. Co. v. Hart*, 55 M 76, 81, 173 P 1062; *East Helena State Bank v. Rogers*, 73 M 210, 213 et seq., 236 P 1090.

Taxation 376(1).

61 C.J. Taxation § 834.

84-1503
(2297.1 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1503. (2297.1) Segregation of income within and without state. If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of the net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable.

History: En. Sec. 3, Ch. 166, L. 1933.

Inapplicable if Gross Business within the State Not Determined

In action to recover taxes paid by a

domestic corporation where controversy was whether interest on obligations of nonresidents, collected outside the state and forwarded to the principal office in Montana should be considered as income within the state, this section held inapplicable since, until the interest payments had been determined to be income within or without the state, the gross business within and without the state could not be established, and until these two factors were known, the method of segregation provided by the statute could not be applied. *Montana Life Insurance Co. v. Shannon*, 106 M 500, 504, 78 P 2d 946.

References

Montana Life Insurance Co. v. Shannon, 106 M 500, 504, 78 P 2d 946.

27 Am. Jur. 414, *Income Taxes*, §§ 139 et seq.

Income tax on nonresident as double taxation. 15 ALR 1334.

Income tax on nonresidents. 90 ALR 484.

Computation of income tax on nonresident or foreign corporation. 90 ALR 484.

Constitutionality of discrimination between domestic corporations as regards taxation based on fact whether their business is wholly within state, or wholly out of state, or partially within and partially without. 122 ALR 983.

State taxation in respect of business of nonresidents and of foreign corporations carried on both within and without the state. 130 ALR 1188.

84-1504. (2299) Computation of license tax—return of net income to be filed. (1) The license fee shall be computed upon the total net income of the corporation received within each preceding calendar year ending December 31; provided, that any corporation subject to this license fee may designate the last day of any month in the year as the day of the close of its fiscal year, and shall be entitled to have the license fee payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment, instead of upon the basis of the net income for the calendar year preceding the date of assessment, and it shall give notice to the state board of equalization of the day it has thus designated as the close of its fiscal year, at any time not less than thirty (30) days prior to the time its return would be filed if made upon the basis of the calendar year.

(2) Every corporation, subject to the license fee herein imposed, shall for each year hereafter, for the year ending on the thirty-first day of December, or for its fiscal year selected under the provisions hereof, render a true and accurate return of its annual net income in the manner and form to be prescribed by the state board of equalization, and containing such facts, data and information as are appropriate and in the opinion of the state board of equalization necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be sworn to by the president, vice-president or other principal officer, and by the treasurer, assistant treasurer, or chief accounting officer. If the corporation is reporting on a calendar year basis the return shall be filed with the state board of equalization on or before the thirty-first day of March in each year, and if reporting on a fiscal year basis the return shall be filed with said board on or before the last day of the third month following the close of its fiscal year. The term "net income" means the gross income of the corporation less the allowable deductions. The term "fiscal year" means an accounting period of twelve (12) months ending on the last day of any month other than December.

(3) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license fee imposed by this act, such receiver, trustee, or assignee shall make the

return in the same manner and form as such corporation is hereinbefore required to make return, and any license fee due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders.

History: En. Sec. 4, Ch. 79, L. 1917; re-en. Sec. 2299, R. C. M. 1921; amd. Sec. 1, Ch. 146, L. 1923; amd. Sec. 1, Ch. 165, L. 1947.

Co. v. Junod, 73 M 392, 395, 236 P 1080; State v. J. C. Maguire Construction Co., 113 M 324, 335, 125 P 2d 433; Birch Co. v. State Treasurer, 117 M 232, 236, 157 P 2d 777.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090; Cottonwood Coal 27 Am. Jur. 430, Income Taxes, § 218 et seq.

84-1505. (2300) Assessment of tax—payment—lien of tax. All assessments shall be made by the state board of equalization, and the several corporations shall be notified of the amounts for which they are respectively liable, on or before the first day of June of each successive year. Payment of the tax assessed shall be made by corporations reporting on a calendar year basis, on or before the fifteenth day of June following the assessment of the tax. Payment of said tax shall be made by corporations operating on a fiscal year basis on or before the fifteenth day of the sixth month following the close of said corporation's fiscal year. In cases of refusal or neglect to make such return, and in cases of erroneous, false, or fraudulent returns, the state board of equalization shall, upon the discovery thereof at any time within five (5) years after said return is due, make a return upon information obtained as provided for in this act, and the assessment made by the state board of equalization shall be paid by such corporation immediately upon notification of the amount of such assessment. If the license fee assessed thereunder shall not be paid on or before the time specified in this act, there shall be added the sum of ten (10%) per cent on the amount of the license fee unpaid, and interest at the rate of one (1%) per cent per month upon said license fee from the time the same becomes due, and the state shall have a lien for the payment of such license fee, penalty, and interest, which said lien shall attach to any and all property owned or possessed within the state by such corporation, which lien may be enforced in the same manner as liens are enforced at law. If the amount of the tax assessed is less than the amount theretofore paid, the corporation is entitled to a refund of the excess. The state board of equalization must return the overpayment to the taxpayer from any money in the suspense account as shown by the records in the office of the state treasurer.

History: En. Sec. 5, Ch. 79, L. 1917; re-en. Sec. 2300, R. C. M. 1921; amd. Sec. 2, Ch. 146, L. 1923; amd. Sec. 1, Ch. 209, L. 1945.

References

East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090.

84-1506. (2301) Penalty for refusal to make return or rendering false or fraudulent return. If any corporation shall refuse or neglect to make a return at the time hereinbefore specified in each year, or shall render a false or fraudulent return, such corporation shall be liable to a penalty of not exceeding five thousand dollars, and may be adjudged by a court of com-

84-1505
(2300 RCM'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1506
(2301 RCM'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

petent jurisdiction to forfeit the right to continue to engage in business in the state of Montana as such corporation until the license fee, together with all penalties and costs, shall be paid, which forfeiture may be enforced by the attorney general by proper proceedings in court.

History: En. Sec. 6, Ch. 79, L. 1917;
re-en. Sec. 2301, R. C. M. 1921.

Taxation 838, 839.

61 C.J. Taxation § 2112 et seq.

References

East Helena State Bank v. Rogers, 73
M 210, 213, 236 P 1090.

Constitutionality, construction and effect
of specific provisions of state corporate
income tax law to prevent tax evasion.
92 ALR 1073.

84-1507. (2302) Returns and corrections to be public records. When the assessment shall be made as provided in this act, the returns, together with any corrections thereof which may have been made by the state board of equalization, shall be filed in the office of said board, and shall constitute public records and be open to inspection as such only upon the order of the governor, and under rules and regulations to be prescribed by the state board of equalization.

History: En. Sec. 7, Ch. 79, L. 1917;
re-en. Sec. 2302, R. C. M. 1921; amd. Sec.
3, Ch. 146, L. 1923.

References

East Helena State Bank v. Rogers, 73
M 210, 213, 236 P 1090.

84-1508. (2303) Understatement in returns—proceedings. If the state board of equalization has reason to believe that the amount of any income returned is understated, it shall give notice in writing of not less than five (5) days to the corporation making the return to show cause why the amount of the return should not be increased, and upon proof of the amount understated may increase the same accordingly. Such corporations may furnish sworn testimony to prove any relevant fact bearing upon said return. The state board of equalization shall have power to prescribe forms for the returns and notices and such other regulations as may from time to time be found necessary for the purpose of carrying into effect the provisions of this act. Jurisdiction is hereby conferred upon the district court of the first judicial district of the state of Montana, in and for the county of Lewis and Clark, to compel attendance of witnesses to testify before the state board of equalization, together with the production of books and such other testimony by appropriate process. Upon the determination by the state board of equalization of the amount of tax due from any and all corporations under the provisions of this act, the state board of equalization shall mail a notice of the amount of taxes thus determined to be due to the corporation making such return. Such corporation shall thereupon remit the amount of such tax to the state treasurer. When the state board of equalization has reason to believe that the business of any corporation is so conducted as either directly or indirectly to distort the true net income of the corporation and the net income properly attributable to this state, whether by the arbitrary shifting of income through price fixing, charges for service, or otherwise, whereby the net income is arbitrarily assigned to one or another corporation carrying on business under a substantially common control, it may require the disclosure of such facts as it deems necessary for the proper computation of the entire net income and the net income properly attributable to this state, and in determining

the same, the board shall have regard to the fair profits which would normally arise from the conduct of the business.

History: En. Sec. 8, Ch. 79, L. 1917; re-en. Sec. 2303, R. C. M. 1921; amd. Sec. 4, Ch. 146, L. 1923; amd. Sec. 4, Ch. 166, L. 1933. **References** East Helena State Bank v. Rogers, 73 M 210, 213, 236 P 1090.

84-1509. (2303.1) Consolidated returns—computation and procedure on.

(a) Corporations which are affiliated may, if authorized, and shall, if required, by the state board of equalization, under regulations prescribed by said board, make a consolidated return for the purpose of this act. In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of any such agreement, then on the basis of the net income properly assignable to each.

(b) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, substantially all of the capital stock of another corporation, or of other corporations, may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding inter-corporate stockholdings and inter-corporate accounts. Any corporation liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding inter-corporate stockholdings and inter-corporate accounts. In case it shall appear to the state board of equalization that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state board of equalization is authorized and empowered, in such manner as it may determine, to equitably adjust the tax.

History: En. Sec. 5, Ch. 166, L. 1933.

84-1510. (2303.2) Reports upon merger of corporations—payment of tax. If any corporation shall acquire either directly, indirectly or by merger or consolidation the major portion of the actively employed assets of another corporation or of corporations doing any business in this state during any year, or shall merge or consolidate another corporation, it shall, within thirty (30) days after such acquisition, merger or consolidation, file a report and include therein a statement showing its own and the consolidated entire net income of all such corporations for preceding calendar or fiscal years to the extent that all such income has not been used or included in measuring a corporation excise tax to this state. It shall, in any event, be liable for and pay all taxes that would have been due and payable by the corporation, or corporations, on or before the first day of January next succeeding had the corporation or corporations whose assets were acquired, or which were merged or consolidated, continued in business and as though there had been no interruption or change of the business thereof

84-1509
(2303.1 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1510
(2303.2 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

nor discontinuance of the privilege of doing business. It shall also include in its own next annual return, in addition to its own entire net income, so much of the entire net income of corporations whose assets it acquired, or which were merged or consolidated, as shall not have been used or included in measuring a corporation excise tax to this state, and shall be taxed upon such combined entire net income for the year to ensue.

History: En. Sec. 6, Ch. 166, L. 1933.

84-1511. (2303.3) Return and payment of tax by corporations on dissolution or cessation of business—declaration of policy. (1) It is hereby declared that the policy of the state of Montana, both at the time of the enactment of the corporation license tax law and at all times since, has been and still is that every corporation doing business in Montana shall pay an excise tax for the exercise of such privilege and that the amount of such tax shall be based upon the total taxable net income of such corporations during the entire period of time they are engaged in business in this state. No remission of that obligation for the last year in which a corporation engages in business in Montana was intended by the original enactment of this section.

(2) Therefore, every corporation which shall be dissolved or cease to do business in Montana at any time during any year, shall, before such dissolution or cessation of business, make a return and pay a corporation license tax in the amount of three per cent (3%) of its total taxable net income (as such income is defined by section 84-1501) during the last year in which it did business in this state, in addition to all other corporation license taxes for which such corporation may then be liable. Such payment shall be deemed an accelerated payment of an additional tax for the last year in which such corporation did business in Montana, based on its net income up to the time of its dissolution or cessation of business, and which said income had not theretofore been used in measuring the license tax liability of such corporation. The state board of equalization may grant a reasonable extension of time for filing said return, upon good cause being shown.

History: En. Sec. 7, Ch. 166, L. 1933; amd. Sec. 1, Ch. 67, L. 1943.

Construction

A foreign corporation engaged in business in the state from April, 1934, continuously until December, 1937, when it ceased doing business, having paid the corporation license tax fee in 1935, 1936 and 1937, refusing to pay in 1938, upon demand, on the ground that its 1937 pay-

ment was for 1937. The state contended the 1937 payment was for 1936. Held, that under this section (before amendment), that the tax is an excise or license and not an income tax, the tax paid in 1937 being for the year 1937 measured by the company's business done in 1936, and not having done any business in 1938 it owed nothing to the state. *State v. J. C. Maguire Construction Co.*, 113 M 324, 330, 125 P 2d 433.

84-1512. (2303.4) Where omission deemed committed—certificate of board as evidence. The failure to do any act, required by or under the provisions of this act, shall be deemed an act committed in the office of the state board of equalization in the state capitol building, in Helena, Montana. The certificates of the state board of equalization to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be

prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 8, Ch. 166, L. 1933.

84-1513. (2303.5) Action in case of false or fraudulent returns. In the case of a false or fraudulent return with intent to evade tax or of a failure to file a return the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

History: En. Sec. 9, Ch. 166, L. 1933.

84-1514. (2303.6) Delinquency—suspension — forfeiture — dissolution. If a tax computed and levied hereunder is not paid or if a return is not filed before five o'clock P. M. on the last day of the eleventh month after the date of delinquency the corporate powers, rights and privileges of the delinquent taxpayer, if it be a domestic corporation, shall be suspended, and if the delinquent taxpayer be a foreign corporation it shall thereupon forfeit its rights to do intrastate business in this state. Provided that, if any domestic corporation shall fail, for a period of five consecutive years, to either file a return or to pay the corporation license tax, the state board of equalization shall notify such corporation by mail addressed to the latest address on file in its office that such corporation will become dissolved if it fails to file all delinquent reports and pay all delinquent corporation license taxes within a period of sixty (60) days from and after the mailing of such notice, and, if such delinquent reports are not made and all delinquent corporation licenses are not paid before the expiration of said sixty (60) day period, the state board of equalization shall certify this fact to the secretary of state and upon receipt of such certificate, the said corporation shall be dissolved and the secretary of state shall indicate, by his records, such dissolution.

The state board of equalization shall transmit the name of each such corporation to the secretary of state, who shall immediately record the same in such manner that it may be available to the public. The suspension, forfeiture or dissolution herein provided for shall become effective immediately such record is made, and the certificate of the secretary of state shall be conclusive evidence of such suspension, forfeiture or dissolution.

History: En. Sec. 10, Ch. 166, L. 1933;
amd. Sec. 1, Ch. 94, L. 1947.

Taxation 840.
61 C.J. Taxation § 2128 et seq.

84-1515. (2303.7) Reviver of corporation after suspension or forfeiture. Any corporation which has suffered the suspension or forfeiture referred to in the preceding section may be relieved therefrom upon making application therefor in writing supported by a certificate from the state board of equalization showing that the required return has been made and filed and/or that the tax and interest and penalties have been paid, for which the suspension or forfeiture occurred. Application for reviver may be made by any stockholder or creditor of the corporation or by a majority of the surviving trustees or directors, and the same shall be filed with the secretary of state. In case the application is made in any taxable year other than the taxable year in which the suspension or forfeiture occurred the applicant shall pay twice the amount of the tax and penalties due the state for the taxable year in which the suspension or forfeiture occurred, and upon such payment the secretary of state shall issue a certificate of reviver and thereupon the ap-

84-1513
(2303.5 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1514
(2303.6 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1515
(2303.7 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

plicant shall be revived. The reviver shall be without prejudice to any action, defense or right which has accrued by reason of the original suspension or forfeiture. The certificate of reviver shall be prima facie evidence of the reviver. Any certificate of reviver provided for in this section may be recorded in the office of the county recorder in any county of this state.

History: En. Sec. 11, Ch. 166, L. 1933;
amd. Sec. 1, Ch. 49, L. 1947.

84-1516. (2303.8) Penalty for violation of act. Every officer or employee of any corporation or other person, who, without fraudulent intent, shall fail to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be liable to a penalty of not more than one hundred dollars (\$100) to be imposed, assessed, and collected by the state board of equalization in the same manner as is provided in this act with regard to delinquent taxes.

History: En. Sec. 12, Ch. 166, L. 1933.

Taxation 838.

61 C.J. Taxation § 2112 et seq.

84-1517. (2303.9) Failure to make return—estimate and investigation of net income. (a) If any taxpayer fails to make return as herein required, the state board of equalization is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

(b) The state board of equalization, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

History: En. Sec. 13, Ch. 166, L. 1933.

84-1518. (2303.10) Reciprocity with federal and other states' revenue officers regarding returns. The state board of equalization under such rules as they may prescribe, may permit, notwithstanding the provisions of this act as to secrecy, the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax on or according to income, to inspect the returns of any taxpayer making returns under this act, or may furnish to such officer or his authorized representative an abstract or any return or matter contained in any affidavit, statement or certificate made or filed in connection with any return or any tax or credit claimed as a deduction from any tax, or any information disclosed by the report of any investigation relating to the income or tax of any taxpayer; but such permission shall be granted or information furnished to such officer, or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

History: En. Sec. 14, Ch. 166, L. 1933.

84-1516
(2303.8 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1517
(2303.9 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1518
(2303.10 RCM
'35)
Ref. to
SL '49, C. 199
Sec. 5, P. 478

84-1519
(2303.11 RCM
'35)
Ref. to
SL. '49, C. 199
Sec. 5, P. 478

84-1519. (2303.11) Repealing and saving clause. That section 2298 and all acts and parts of acts in conflict herewith are hereby repealed; provided, however, that the repeal or amendment of the sections as amended by this act shall not be construed to relieve or release any corporation from the payment of any license fee which such corporation should have paid under the provisions of such sections before the repeal or amendment thereof by this act, or of any penalty or interest which has heretofore or may hereafter attach to or become due thereon, but all such license fees, penalties and interest shall be fixed and determined under the provisions of such sections as amended, and shall be paid and collected as though such sections had not been amended by this act.

History: En. Sec. 15, Ch. 166, L. 1933.

Taxation—113.

61 C.J. Taxation § 231 et seq.

CHAPTER 16

LICENSE TAXES—ELECTRICAL ENERGY PRODUCERS

- Section 84-1601. Electrical energy producers license tax.
 84-1602. Payment of tax—not to be set out on customers' bills.
 84-1603. Disposition of revenue—interest on delinquency.
 84-1604. Statement of producer—contents—time for filing.
 84-1605. Producers' monthly statement of gross sales—inspection of books of producer.
 84-1606. Exemptions.
 84-1607. Future producers to comply with act.
 84-1608. False statements constitute perjury.
 84-1609. Penalty for violation—enforcement.

84-1601. (2343.1) Electrical energy producers license tax. That in addition to the license tax now provided by law, each and every individual, firm, partnership, common law trust, corporation, association or other organization now engaged in the generation, manufacture or production of electricity, and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale or exchange and hereinafter referred to as the "producer", shall on or before the fifteenth (15) day of each calendar month beginning with the fifteenth (15) day of April, 1934, render a statement to the state board of equalization of the state of Montana, showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction, and shall pay a license tax thereon in the sum of one per cent (1%) of such gross amount as shown on such statement in the manner and within the time hereinafter provided.

History: En. Sec. 1, Ch. 51, Ex. L. 1933;
 amd. Sec. 1, Ch. 83, L. 1937.

Electricity—10.

29 C.J.S. Electricity § 4.

33 Am. Jur. 321, Licenses, generally.

84-1602. (2343.2) Payment of tax—not to be set out on customers' bills. Said license tax shall be remitted with the statement and paid on or before the fifteenth (15) day of each month, beginning with the fifteenth (15) day of April, 1934. No bill, statement or account rendered or given any customer by any organization affected by the provisions of this act shall set out or contain, as a separate item, any amount on account or by reason of, the license tax imposed by this act.

History: En. Sec. 2, Ch. 51, Ex. L. 1933.

84-1603
(S.L. '41, C.14,
Sec. 6)
194 P.(2d) 638
199 P.(2d) 971

84-1603. (2343.3) Disposition of revenue—interest on delinquency. The state board of equalization shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent and shall bear interest from said due date at the rate of twelve per cent (12%) per annum.

History: En. Sec. 3, Ch. 51, Ex. L. 1933; Sec. 1, Ch. 83, L. 1937; amd. Sec. 6, Ch. amd. Sec. 20 (F), Ch. 109, L. 1935; amd. 14, L. 1941.

84-1604. (2343.4) Statement of producer—contents—time for filing. On or before the fifteenth (15) day of April, 1934, every producer referred to in section 84-1601, engaged in the production, generation or manufacture of electricity or electrical energy, shall make and file with the state board of equalization of the state of Montana, on forms prescribed by the state board of equalization, an acknowledged and verified certificate which shall contain:

(a) The name under which the producer is transacting business within the state;

(b) His or its post office address and principal place of business within the state;

(c) The address and location of his or its production plants or station in the state of Montana;

(d) The name and address of the managing agent;

(e) The names and addresses of the several persons composing any firm or partnership constituting the producer, and if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its officers, directors, general agent and general manager.

(f) Certified copies of any papers necessary to show that such producer has complied with the laws of the state of Montana in order to transact business in Montana.

History: En. Sec. 4, Ch. 51, Ex. L. 1933.

84-1605. (2343.5) Producers' monthly statement of gross sales—inspection of books of producer. That every such producer shall on or before the fifteenth (15) day of each calendar month, beginning with April 15, 1934, and monthly thereafter, render to the state board of equalization of the state of Montana on forms prescribed by the state board of equalization, a statement sworn to by the manager, president, secretary or treasurer, showing the gross proceeds received for or on account of, all sales of electricity and electrical energy for the preceding calendar month. The books and records of such producer shall be subject to inspection by the state board of equalization, its agents or employees, during reasonable hours.

History: En. Sec. 5, Ch. 51, Ex. L. 1933.

84-1606. (2343.6) Exemptions. All electricity and electrical energy used for pumping water for irrigation purposes to be used on lands in the state of Montana is exempt from the provisions of this act, except in cases where the water so pumped is sold or rented to such irrigated lands; provided, the exemption here given shall accrue to the benefit of the consumer of such electricity and electrical energy. Provided, further, that the full amount of such license tax which would have been due from such producers of electricity and electrical energy, if such exemption had not been made, shall be credited annually for the year in which the exemptions are made, on

the power bill of the consumer, by the producer of such electricity and electrical energy, furnishing such power and such producer shall include a statement of the amount of electricity and electrical energy exempted by this section, furnished by it for the purpose of pumping water for irrigation purposes on lands in the state of Montana, to the state board of equalization as part of the statement required by section 84-1601, together with a statement of credits made on the power bills to the consumers of such electricity and electrical energy for the pumping of water for irrigation to be used on lands in the state of Montana.

History: En. Sec. 6, Ch. 51, Ex. L. 1933.

Cross-Reference

Rural electric cooperatives exempt from excise tax, sec. 14-528.

84-1607. (2343.7) Future producers to comply with act. Any producer of electricity or electrical energy referred to in section 84-1601, who shall hereafter engage in the generation, production or manufacture of electricity or electrical energy shall immediately upon purchasing or acquiring the plant or installing equipment therefor, comply with the requirements of this act.

History: En. Sec. 7, Ch. 51, Ex. L. 1933;
amd. Sec. 1, Ch. 20, L. 1935.

84-1608. (2343.8) False statements constitute perjury. Any person, officer, partner, agent or representative of any producer referred to in section 84-1601, who shall make any false statement, affidavit, certificate, report or statement herein required to be made to the state board of equalization, hereunder, shall be deemed guilty of perjury and upon conviction shall be punished by imprisonment in the state penitentiary for not less than one (1) nor more than fourteen (14) years.

History: En. Sec. 8, Ch. 51, Ex. L. 1933.

84-1609. (2343.9) Penalty for violation—enforcement. Any producer, referred to in section 84-1601, who shall violate any of the provisions of this act, or who shall fail to pay the license tax herein provided for, or any part thereof, when due, shall be liable for three (3) times the amount of the unpaid or delinquent tax in a civil action instituted for that purpose in a court of competent jurisdiction, in the name of the state of Montana, and in such suit, upon application of the state, an injunction may be issued without requiring any bond, restraining the defendant from continuing to produce electricity or electrical energy, so long as the tax due hereunder from said defendant remains delinquent.

History: En. Sec. 9, Ch. 51, Ex. L. 1933.

CHAPTER 17

LICENSE TAXES—EXPRESS COMPANIES

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| Section | 84-1701. Definition of express companies. |
| | 84-1702. Statements to be filed with state board of equalization. |
| | 84-1703. Gross receipts—how ascertained. |
| | 84-1704. Procedure in case of failure to make statement. |
| | 84-1705. Penalty for failure to make statement—duty of attorney general to institute action. |
| | 84-1706. State board of equalization authorized to require production of books. |

- 84-1707. Amount and collection of license tax.
 84-1708. Collection of license fee by suit on failure of company to pay.
 84-1709. Exemption from payment of other tax.

84-1701. (2305) Definition of express companies. That any person or persons, joint-stock association or corporation, wherever organized or incorporated, engaged in the business of conveying to, from, or through this state or any part thereof, money, packages, gold, silver plate, or any articles by express service, as distinguished from the ordinary freight lines of transportation of merchandise and property in this state shall be deemed to be an express company.

History: En. Sec. 1, Ch. 87, L. 1917; Taxation 142.
 re-en. Sec. 2305, R. C. M. 1921. 61 C.J. Taxation § 294.

84-1702. (2306) Statements to be filed with state board of equalization. Any express company as defined in the preceding section, doing business in this state, shall annually, between the first and thirtieth day of April, after the approval of this act, under oath of the person constituting such company, if a person, or under oath of the president, treasurer, superintendent or chief officer in this state of such association or corporation, if an association or corporation, make and file with the state board of equalization, a statement in such form as the board may prescribe, containing the following facts:

- First. The name of the person or persons, association or corporation;
- Second. Under the laws of what state or country organized;
- Third. The location of its principal office;
- Fourth. The name and postoffice address of the president, secretary, auditor, treasurer, superintendent and general manager;
- Fifth. The name and postoffice address of the chief officer or managing agent of the company in this state;
- Sixth. The entire receipts (including all sums entered or charged whether actually received or not) for business done by such company within this state, including its proportion of gross receipts for business done by such company within the state in connection with other companies;
- Seventh. Such other facts and information as the said board may require in the form of return prescribed by it.

History: En. Sec. 2, Ch. 87, L. 1917; Taxation 329 et seq.
 re-en. Sec. 2306, R. C. M. 1921. 61 C.J. Taxation § 820 et seq.

84-1703. (2307) Gross receipts—how ascertained. The state board of equalization shall proceed to ascertain and determine on or before the first Monday of August in each year the entire gross receipts of each of said express companies for business done within the state of Montana for the year next preceding the first day of April, and the amount so ascertained by the said board shall be held and deemed to be the gross receipts of such express company for business done within the state of Montana for the year under consideration.

History: En. Sec. 3, Ch. 87, L. 1917;
 re-en. Sec. 2307, R. C. M. 1921.

84-1704. (2308) Procedure in case of failure to make statement. In case of failure or refusal of any express company to make the statement required by law or furnish the board any information required by it, the board

shall inform itself as best it may on the matters necessary to be known in order to discharge its duty, and at any time after the meeting of the board and before the gross receipts of any express company for business done within the state are determined, any person, company or corporation interested shall have the right, on written application, to appear before the board and be heard on the matter of such determination. After the determination of the amount of the gross receipts of any express company for business done in the state and before the certification of such amount by such board, the board may, on the application of any person, company or corporation interested, or on its own motion, review and correct its findings in such manner as may seem to it to be just and proper.

History: En. Sec. 4, Ch. 87, L. 1917;
re-en. Sec. 2308, R. C. M. 1921.

Taxation—372.
61 C.J. Taxation § 832.

84-1705. (2309) Penalty for failure to make statement—duty of attorney general to institute action. In case any express company shall refuse, fail or neglect to make and file the statement or schedule as provided for in this act, such company shall be subject to a penalty of five hundred dollars and an additional penalty of one hundred dollars for each day's omission after the thirtieth day of April to file its statement, said penalty to be recovered by action in the name of the state and on collection paid into the state treasury to the credit of the general fund of the state. The attorney general, on request of the state board of equalization, shall institute such action against any such person or persons, joint-stock company or corporation so delinquent in any court of competent jurisdiction in this state.

History: En. Sec. 5, Ch. 87, L. 1917;
re-en. Sec. 2309, R. C. M. 1921.

Taxation—838, 845.
61 C.J. Taxation §§ 2112 et seq., 2152
et seq.

84-1706. (2310) State board of equalization authorized to require production of books. The state board of equalization shall have power to require the president, secretary, treasurer, receiver, superintendent, managing agent or other officer or employee or agent of any express company engaged in an express company business to attend before the board and bring with him for inspection any books or papers of such company in his possession or under his control and to testify under oath on any matter relating to the organization or business of such express company. Any member of the board is authorized and empowered to administer such oath. Any person who shall refuse to attend before the board when subpoenaed so to do, or shall refuse to bring with him and submit for the inspection of the board any books or papers in his possession, custody or control, or shall refuse to answer any questions put to him by the board affecting the organization or business of the express company under investigation shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not more than five hundred dollars nor less than one hundred dollars.

History: En. Sec. 6, Ch. 87, L. 1917;
re-en. Sec. 2310, R. C. M. 1921.

84-1707. (2311) Amount and collection of license tax. The state board of equalization shall, on the first Monday of August, annually, enter in a book provided for that purpose the amount of gross receipts of express companies doing business in this state for the year next preceding the first day of

April, as determined by the provisions of this act. It shall be the duty of the state treasurer annually to collect from each such express company doing business in this state, a sum in the nature of a license tax to be computed by taking four per centum of the amount fixed by the state board of equalization as the gross receipts of such express company for business done within the state for the year next preceding the first day of April as determined and certified by the state board of equalization; provided, however, that nothing contained in this act shall exempt or relieve any express company from the assessment and taxation of its tangible property in the manner authorized and provided by law. All licenses collected under the provisions of this act shall be accredited to the general fund of the state.

History: En. Sec. 7, Ch. 87, L. 1917; 33 Am. Jur. 365, Licenses, §§ 41 et seq.; amd. Sec. 1, Ch. 150, L. 1921; re-en. Sec. 51 Am. Jur. 755, Taxation, § 847.
2311, R. C. M. 1921.

84-1708. (2312) Collection of license fee by suit on failure of company to pay. If any express company fails or refuses to pay the license fee as provided for in this act before the thirtieth day of September annually, the state treasurer shall proceed to collect the taxes, together with interest, at the rate of twelve per cent. per annum by suit instituted by the attorney general, whose duty it shall be to prosecute any and all proceedings for the collection of such taxes.

History: En. Sec. 8, Ch. 87, L. 1917; Taxation 583 et seq.
re-en. Sec. 2312, R. C. M. 1921. 61 C.J. Taxation § 1377 et seq.

84-1709. (2313) Exemption from payment of other tax. No other license or franchise tax shall be levied against any express company except the license tax provided by this act.

History: En. Sec. 9, Ch. 87, L. 1917;
re-en. Sec. 2313, R. C. M. 1921.

CHAPTER 18

LICENSE TAXES—GASOLINE DEALERS AND DISTRIBUTORS— DIESEL FUEL USE PERMITS

- Section 84-1801. Definitions.
84-1802. Dealers' statements—amount of tax.
84-1803. Rules and regulations to be established by state board.
84-1804. Delinquent penalty and interest.
84-1805. Records to be kept by dealers.
84-1806. Penalty for failure to file statements.
84-1807. Procedure in case of failure to file statement or pay tax—lien of tax.
84-1808. Inspection of records.
84-1809. Invoice of dealers.
84-1810. Exported gasoline not included in computation of tax.
84-1811. Reports of carriers.
84-1812. Distribution of proceeds of tax—funds.
84-1813. Tax to be collected on motor fuel, when.
84-1814. Delinquency as misdemeanor—penalty.
84-1815. Districts for distribution of state highway fund.
84-1816. Use of state highway fund on federal highway system.
84-1817. Percentage of incompleting mileage in district.
84-1818. Refund of gasoline license tax—procedure.
84-1819. Penalty for false statements or unlawfully obtaining refunds.
84-1820. License and bond of gasoline dealers and distributors.
84-1821. Revocation of license on failure to file statements or pay tax.
84-1822. Violation of act as misdemeanor.
84-1823. Definition of "gasoline dealer."

- 84-1824. Use fuel tax permit, when required.
- 84-1825. Application for and issuance of permit.
- 84-1826. Revocation of permits.
- 84-1827. Diesel fuel defined.
- 84-1828. Other terms defined.
- 84-1829. Existing statutes not affected by this act.

COMMISSIONER'S NOTE.—Sections 2381.1 to 2381.10, inclusive, R.C.M. 1935, the Highway Anticipation Debenture Act of 1931, are omitted from this codification since the debentures authorized by said act have been retired. Initiative No. 41, the Highway Anticipation Debenture Act of 1938, as amended by Ch. 30, L. 1939 and by Sec. 1, Ch. 79, L. 1943 is also omitted. The three million dollars of debentures authorized by said act have been issued and are subject to call at any time after 1944. By Sec. 7, Ch. 39, L. 1945, the State Highway Treasury Anticipation Debenture Act of 1945, the first funds received from the sale of debentures under that act are pledged for the redemption of the outstanding debentures issued under said Initiative 41 as amended, and the state treasurer is directed to call them for payment. Inclusion of said Initiative No. 41 in the laws of a permanent nature therefore seems unnecessary. Also see note at beginning of Title 79.

84-1801. (2381.11) Definitions. As used in this act, the following definitions shall apply:

(1) The word "gasoline" means:

(a) The volatile substance produced from petroleum, natural gas, oil shales or coal heretofore sold under the name of "gasoline," and sold or used for producing motor power for internal combustion engines or for producing power for propelling motor vehicles.

(b) Any other volatile product or substance of not less than forty-six degrees (46°) Taglianbes-Baume test sold or used for producing motor power for internal combustion engines or for producing power for propelling motor vehicles.

(c) Any other volatile substance, of less than forty-six degrees (46°) Taglianbes-Baume test, when actually sold or used to produce motor power to propel motor vehicles upon public highways or streets within the state of Montana; provided that the lawful tax on the kind of gasoline as defined by this subsection (1-c) shall be collected from the owners or operators of motor vehicles by the state board of equalization under the provisions of rules and regulations issued by said board.

(2) The word "person" means any person, firm, association, joint stock company, syndicate or corporation.

(3) The words "motor vehicle" mean all vehicles operated or propelled upon the public highways or streets of this state, in whole or in part by the combustion of gasoline.

(4) The word "use" shall include and mean the operation of motor vehicles upon the public roads or highways of the state of Montana, or of any political subdivision thereof.

(5) The word "import" shall include and mean to receive into any person's possession or custody first after its arrival and coming to rest at destination within the state of Montana of any gasoline shipped or transported into this state from point of origin without this state.

(6) The word "handle" means to produce, refine, manufacture or compound gasoline and use it or sell it in less than railway tank car lots, or to import gasoline into the state of Montana or to purchase gasoline within the state of Montana for sale or for one's own use, upon which the license tax herein imposed has not been paid.

84-1801
(2381.11 RCM
(35)
Ref. to
SL, '49, C. 167
Sec. 1, P. 362

84-1801
Amended
L. '51, c. 52
Sec. 1, p. 98

(7) The word "dealer" means and includes any person who engages in the business in the state of Montana of producing, refining, manufacturing or compounding gasoline and using it or selling it in less than railway tank car lots, or of importing gasoline into the state of Montana or purchasing gasoline within the state of Montana for sale or for one's own use. Such gasoline, for the purpose of this act, shall be deemed to be "handled" by such dealer.

History: En. Sec. 1, Ch. 19, L. 1927; amd. Sec. 1, Ch. 170, L. 1933; amd. Sec. 1, Ch. 116, L. 1935.

Use of Funds Collected Under This Act

Held, on application for writ of mandate to compel the state highway commission to include within its construction program a piece of road, a part of the federal highway system, which during periods of high water is rendered impassable, leaving no highway connection between a county seat and the rest of the county, that the fact that the road in question is a part of the federal forest road does not deprive the highway commission of authority of expending any portion of the gasoline license tax funds derived under this act, in matching funds provided by the federal

aid act, nothing appearing in either prohibiting it from doing so. *State v. State Highway Commission*, 82 M 63, 66 et seq., 265 P 1.

References

State v. Yale Oil Corp. of South Dakota, 88 M 506, 512, 295 P 255; *State v. State Highway Com. et al.*, 89 M 205, 208, 296 P 1033; *Arps v. State Highway Commission*, 90 M 152, 157, 300 P 549.

Licenses—16(9), 29.

37 C.J. Licenses §§ 73, 116.

51 Am. Jur. 1073, Taxation, §§ 1260 et seq.

Constitutionality and construction of gasoline tax statute. 47 ALR 985; 84 ALR 839 and 111 ALR 186.

84-1802. (2381.12) Dealers' statements—amount of tax. Each dealer shall, not later than the fifteenth (15th) day of each calendar month, beginning with the next calendar month after this act has become effective, render a true statement to the state board of equalization, duly signed and sworn to, of all gasoline handled by him in this state during the preceding calendar month, and containing such other information as the state board of equalization may require, and shall accompany such statement with the payment to the state board of equalization of a license tax, in an amount equal to five cents (5c) per gallon for each gallon of gasoline so handled for the time beginning April 1, 1931, and ending March 31, 1941, and thereafter in an amount equal to three cents (3c) per gallon for each gallon of gasoline so handled, and upon which such licence tax was not paid by any other dealer in this state, for engaging in and carrying on such business in this state. In making the computation of license tax due and in making payment thereof, two per centum (2%) of the amount of such tax shall be deducted by the dealer as an allowance for evaporation and other loss of gasoline handled by such dealer. Any dealer engaged in or carrying on his business at more than one place or location in this state may include all such places of business in one statement.

History: En. Sec. 3, Ch. 19, L. 1927; amd. Sec. 4, Ch. 92, L. 1929; amd. Sec. 4, Ch. 6, L. 1931.

Licenses—30.

37 C.J. Licenses § 117.

84-1803. (2381.13) Rules and regulations to be established by state board. The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 4, Ch. 19, L. 1927.

84-1804. (2381.14) Delinquent penalty and interest. Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

History: En. Sec. 5, Ch. 19, L. 1927. 37 C.J. Licenses § 145 et seq.
51 Am. Jur. 1089, Taxation, § 1277.
Licenses⇒41.

84-1805. (2381.15) Records to be kept by dealers. Each dealer shall keep a record in such form as the state board of equalization shall require, showing the total number of gallons handled by such dealer within this state, and such other information as the state board of equalization may require.

History: En. Sec. 6, Ch. 19, L. 1927.

84-1806. (2381.16) Penalty for failure to file statements. Each dealer, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of handling gasoline, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars (\$1,000.00) or imprisonment in the county jail for not to exceed six months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 7, Ch. 19, L. 1927. Licenses⇒40.
37 C.J. Licenses §§ 151 et seq., 172.

84-1807. (2381.17) Procedure in case of failure to file statement or pay tax—lien of tax. If any dealer or other person subject to the payment of such license tax shall fail, neglect, or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent dealer and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect, and refusal, which shall be in addition to the ten per cent penalty hereinbefore provided for non-payment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction an action to collect such license tax. All license taxes due from any dealer under the provisions of this act, together with all penalties and interest thereon, shall be a lien

upon any and all property of such dealer or other person upon the filing by the state board of equalization, of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the dealer to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid taxes, penalty and interest.

History: En. Sec. 8, Ch. 19, L. 1927;
amd. Sec. 1, Ch. 175, L. 1929.

84-1808. (2381.18) Inspection of records. The books and records of every dealer shall be open and subject to inspection by the state board of equalization or any of its employes or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 9, Ch. 19, L. 1927.

84-1809. (2381.19) Invoice of dealers. Each dealer in this state handling any gasoline as defined in this act, shall, at the time of such handling, make out and deliver to the purchaser or consignee thereof an invoice in which shall be stated the number of gallons of gasoline covered by such invoice and that the license tax on same has been paid or will be paid to the treasurer of the state of Montana within fifteen (15) days after the current month, as provided in this act.

History: En. Sec. 10, Ch. 19, L. 1927.

84-1810. (2381.20) Exported gasoline not included in computation of tax. No gasoline exported out of the state of Montana shall be included in the computation of any dealer's license tax herein provided for.

History: En. Sec. 11, Ch. 19, L. 1927.

84-1811. (2381.21) Reports of carriers. Every common carrier, every private carrier and every contract carrier of property, including railroad companies, motor truck lines and all other carriers of property, who shall haul, transport or ship any gasoline, as defined in section 84-1801 from any other state or foreign country into the state of Montana, or from the state of Montana to any other state or foreign country or from any refinery in the state of Montana to another point within the state of Montana, shall, on or before the 15th day of each calendar month, make and file with the state board of equalization of Montana a statement under oath showing the

number of gallons of gasoline, as defined in section 84-1801, contained in each such shipment in interstate commerce and the first movement of such products from any refinery located within the state of Montana to another point within the state of Montana during the preceding calendar month, the names and addresses of the consignor and consignee, the date of delivery to such consignee.

History: En. Sec. 12, Ch. 19, L. 1927;
amd. Sec. 1, Ch. 63, L. 1943.

84-1812. (2381.22) **Distribution of proceeds of tax—funds.** All money received by the state treasurer in payment of license taxes under the provisions of this act shall be deposited and credited (a) seventy-five per centum (75%) to the state highway fund, and (b) twenty-five per centum (25%) to a special fund designated as "gasoline license drawback fund."

All money so collected and deposited in the gasoline license tax drawback fund shall be used for the purpose of making such refunds and paying such drawbacks as are authorized by law to be made or paid to purchasers of gasoline used in this state for other purposes than the propulsion of motor vehicles over the public highways and streets of this state, provided, however, that at the close of each fiscal year, the state treasurer shall transfer all money remaining unexpended in said gasoline license tax drawback fund to the state highway fund; provided further, that if at any time the money in said gasoline license tax drawback fund is insufficient in amount to pay duly authorized and approved refunds or drawbacks, the state treasurer shall transfer from the state highway fund a sum or sums sufficient in amount to meet and pay all such outstanding authorized and duly approved refunds or drawbacks.

All money so collected and deposited or transferred to said state highway fund shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act, approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of such other roads as have been or may be authorized by the laws of Montana, for the collection and enforcement of this act; provided, that the total cost to the state of administration and engineering on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per centum (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission.

History: En. Sec. 13, Ch. 19, L. 1927;
amd. Sec. 1, Ch. 178, L. 1929.

Cross-Reference

Aviation gas, distribution of tax, sec. 1-501.

Erection of State Highway Building

Under the implied powers of the commission deemed necessary to render the granted powers efficacious and the performance of its duties effectual the erection of the building is a proper function in the

84-1812
(2381.22 RCM
'35)
Rel. Matter
SL '49, C. 51
FP. 118-119
Ref. to
SL '49, C. 120
Sec. 1, P. 229

84-1812
(2381.22
RCM '35)
194 P. (2d)
635, 640
(S.L. '27, C.19,
Sec. 13)
194 P. (2d) 629

administration of the highway program, providing expenditures therefor do not exceed 8 per cent of the commission's available funds. *Guillot v. State Highway Commission*, 102 M 149, 157, 56 P 2d 1072.

References

Martin v. State Highway Commission et al., 107 M 603, 610, 611, 88 P 2d 41.

Highways \hookrightarrow 99 $\frac{1}{4}$; Licenses \hookrightarrow 33.
40 C.J.S. Highways §§ 176, 178; 37 C.J. Licenses § 129.

84-1813. (2381.23) **Tax to be collected on motor fuel, when.** The state board of equalization shall, under the provisions of rules and regulations issued by said board, collect a tax equivalent to the lawful tax on gasoline upon any other volatile liquid, of less than forty-six degrees (46°) Tagliabanes-Baume gravity test, when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana.

History: En. Sec. 2, Ch. 116, L. 1935.

Licenses \hookrightarrow 16(9).
37 C.J. Licenses § 78.

84-1814. (2381.24) **Delinquency as misdemeanor—penalty.** Any person engaged in the business of handling gasoline as defined in this act, after the license tax imposed by this act, or any part thereof, has been delinquent as provided by this act, or the same has not been paid under protest, shall, in addition to the penalties hereinbefore provided, be deemed guilty of a misdemeanor for each offense, and shall upon conviction thereof, be punished by a fine in any sum not more than five hundred dollars (\$500.00) or imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 15, Ch. 19, L. 1927.

Licenses \hookrightarrow 41.
37 C.J. Licenses § 145 et seq.

84-1815. (2396.1) **Districts for distribution of state highway fund.** That for the purpose of apportioning the expenditure for highway construction purposes of the moneys of the state highway fund, including proceeds received from the license tax upon dealers in gasoline and motor fuels provided for by law, the state is hereby divided into the following twelve districts and the counties in each district are as follows:

- District No. 1. Lincoln, Flathead and Lake;
- District No. 2. Glacier, Toole, Liberty, Hill and Blaine;
- District No. 3. Phillips, Valley, Daniels, Sheridan and Roosevelt;
- District No. 4. McCone, Richland, Dawson, Prairie and Wibaux;
- District No. 5. Fergus, Garfield and Petroleum;
- District No. 6. Pondera, Teton, Chouteau, Cascade and Judith Basin;
- District No. 7. Lewis and Clark, Jefferson and Broadwater;
- District No. 8. Sanders, Mineral, Missoula, Ravalli, Granite and Powell;
- District No. 9. Beaverhead, Deer Lodge, Silver Bow and Madison;
- District No. 10. Park, Gallatin, Sweet Grass, Meagher and Wheatland;
- District No. 11. Golden Valley, Musselshell, Stillwater, Yellowstone, Carbon, Big Horn and Treasure;
- District No. 12. Rosebud, Custer, Fallon, Powder River and Carter.

History: En. Sec. 1, Ch. 18, L. 1927.

References

State v. State Highway Commission, 82

M 63, 66 et seq., 265 P 1; *State v. State Highway Com. et al.*, 89 M 205, 208, 296 P 1033; *Arps v. State Highway Commission*, 90 M 152, 157, 300 P 549; *State ex*

rel. State Highway Commission v. District
Court, 105 M 44, 57, 69 P 2d 112.

Highways 90.
39 C.J.S. Highways §§ 145-153.

84-1816. (2396.2) Use of state highway fund on federal highway system.

All moneys of the state highway fund, including moneys arising from the license tax upon dealers in gasoline and motor fuels, but excluding moneys being held in such fund for refund or drawback purposes and expense of collection and enforcement, shall be used and expended by the state highway commission in the construction, reconstruction, betterment, maintenance, administration and engineering on the federal highway system of highways in this state selected and designated under the provisions of the federal aid act, approved July 11, 1916, and the federal highway act approved November 9, 1921, and all amendments thereto, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of highways leading from each county seat in the state to said federal highway system of federal aid roads where such county seat is not on said system, and for the purpose of construction, reconstruction, betterment, maintenance, administration and engineering of such other roads as have been or may be authorized by the laws of Montana. Provided, that the total net costs to the state for administration on the federal aid work contemplated by this act shall not exceed for any fiscal year eight per cent (8%) of the total of state, federal aid and other available funds expended under the supervision of the state highway commission. It shall be the duty of the state highway commission, in expending such money, to carry forward construction from year to year, using the money expended through the matching up of federal aid allotments to Montana upon the said federal highway system of highways in the various parts of the state in proportion to the amount of mileage still to be constructed in the various sections of that system as defined in section 84-1815; provided that nothing in this act shall be construed to conflict with said federal aid highway acts and the rules by which they are administered. The state highway commission is authorized to enter into co-operative agreements with the national park service and the public roads administration for the purpose of maintaining national park approach roads in Montana.

History: En. Sec. 2, Ch. 18, L. 1927; v. District Court, 105 M 44, 57, 58, 69 P amd. Sec. 1, Ch. 74, L. 1945; amd. Sec. 1, 2d 112.
Ch. 264, L. 1947.

References

Highways 99¼.

States ex rel. State Highway Commission 40 C.J.S. Highways §§ 176, 178.

84-1817. (2396.3) Percentage of incompleted mileage in district. At the start of the fiscal year beginning July 1, 1937, and ending June 30, 1938, the state highway commission shall compute from its records the percentage of incompleted mileage within each of said districts which each district respectively bears to the total incompleted mileage of said federal highway system within this state at that time, and for that fiscal year the state highway commission shall use the percentages so computed in allotting to each of said districts construction moneys from the state highway fund as defined and provided by section 84-1816. At the beginning of each fiscal year thereafter the same procedure shall be carried out, and the actual respective percentages of incompleted mileage in each district as so computed and de-

terminated at the beginning of each fiscal year shall be used in allotting said moneys to said districts for that fiscal year. As a basis for the determination of the amount of incompleting mileage of said federal highway system in this state for each fiscal year, the state highway commission shall adopt as the criterion the current definition, as prescribed by the public roads administration, for a fully and adequately completed federal highway in this state. This criterion shall be considered as a 100% completed federal highway; and federal highway mileage which is only partially completed under the application of this criterion, shall be considered as only partially completed on a percentage basis, this to be determined from the relative estimated percentage costs of construction already performed and of additional construction which must be performed to bring said mileage up to the standard of said criterion.

The state highway commission may vary the expenditures made in any district under the provisions of this act to the extent of fifteen percent (15%) above the amount of money allocated to such district in any year, provided that the allocation of construction money to such district for the next succeeding fiscal year shall be decreased by an amount equal to such increased expenditures, and the amount so deducted shall be allocated to the other districts on the basis of the percentages established in the year that the increased expenditures were made.

History: En. Sec. 3, Ch. 18, L. 1927; 1, Ch. 213, L. 1939; amd. Sec. 1, Ch. 175, amd. Sec. 1, Ch. 102, L. 1937; amd. Sec. L. 1943; amd. Sec. 1, Ch. 87, L. 1945.

84-1818. (2396.4) Refund of gasoline license tax—procedure. (1) That any person who shall purchase and use any gasoline, with reference to which there has been paid into the treasury of the state of Montana, under the laws of this state licensing dealers in gasoline, a tax at the rate of five cents (5c) per gallon, for the purpose of operating or propelling stationary gas engines, tractors used for purposes other than on the public highways or streets of this state, motor boats, aeroplanes or aircraft, or for cleaning or dyeing, or for any commercial use other than propelling vehicles upon any of the public highways or streets of this state, and who has paid said tax either directly to the state of Montana or indirectly as a part of the purchase price of said gasoline, shall be allowed and paid as a refund or drawback an amount of money equal to five cents (5c), multiplied by the number of gallons of gasoline so purchased and used, provided that counties, incorporated cities, towns and school districts of this state shall be entitled to said refund or drawback of said tax by any such county, city, town or school district upon gasoline used by it in the performance of any of its governmental and proprietary functions, or either, imposed or authorized by law, including construction, maintenance and repair of all roads, highways and public places within the county limits and all streets, avenues, alleys and other public places within the corporate limits of such city or town; provided that such refund or drawback shall in no instance exceed the total amount of the tax paid or to be paid, to the state of Montana, upon presenting to the board of equalization of the state of Montana, within the time allowed by law, a sworn statement, accompanied by the invoice or invoices issued to the claimant at the time of purchase of such gasoline showing such purchase and use, which statement shall set forth in words

84-1818
(2396.4 RCM
'35)
Amended
SL '49, C. 168
Sec. 1, P. 363
SL '49, C. 198
Sec. 1, P. 470
Ref. to
SL '49, C. 120
Sec. 1, P. 230

84-1818
(2396.4
RCM '35)
(S.L. '27,
C. 17, Sec. 1)
(S.L. '39, C. 67,
S.L. '47,
C. 130)
124 P. (2d)
628-641

and figures, the total amount of the gasoline so purchased, and the purpose for which the same was actually used, the amount of the tax and such additional information as may be required by said board on forms to be furnished by them.

(2) All such applications for refunds or drawbacks shall be filed with the board of equalization of the state of Montana within six (6) months after the date on which such gasoline was purchased as shown by such invoices. The said board shall have sixty (60) days thereafter within which to make such investigation as it may desire, to ascertain the truths of the statements made. If the statement is found to be correct and is approved by said board and the state board of examiners, the state auditor shall draw his warrant upon the state treasurer for the amount of such claim and same shall be paid out of the gasoline license tax drawback fund in the same manner as other claims against the state are paid. Such refund or drawbacks shall be made only to, and on the application of, the actual purchaser and user of the gasoline upon which refund is claimed and the burden of establishing the validity of the claim rests upon the claimant.

(3) Should the board of equalization, after investigation, find that the statement so made by said consumer contains errors which, in the opinion of the board were not inserted for the purpose of fraud, it may correct the statement and approve the same as corrected whereupon warrant shall issue, after approval by the state board of examiners, as above provided, or the board may, in its discretion, require the claimant to file an amended statement before action is taken thereon. If, upon investigation, it shall be determined by the state board of equalization that any claim has been fraudulently presented or is supported, as to any item therein by invoice or invoices fraudulently made or altered in any manner, or that any statement in the claim contained or the affidavit thereto, is wilfully false in any particular and so made for the purpose of misleading said board, the board may reject such claim in toto.

(4) Any person desiring to claim refund on gasoline purchased shall obtain from the state board of equalization a permit by application therefor, on such form as the board shall prescribe, which application shall be made under oath and shall contain, among other things, the name, address and occupation of the applicant, the nature of the business, and a sufficient description for identification of the machines or equipment in which the taxable motor fuel is to be used for which refund may be claimed under such permit.

(5) Each permit issued shall bear a permit number and each claim filed shall bear the permit number of the claimant. It shall be the duty of the state board of equalization to keep a record of all permits issued and a cumulative record of refund claimed and paid thereunder.

(6) Whenever a claim shall be rejected upon the ground of fraud, as above provided, the state board of equalization may suspend the claimant's permit, for a period not exceeding one year, and no claim shall thereafter be approved or allowed for refund on any gasoline purchased by such claimant during such period of suspension.

(7) All of the subdivisions of the state mentioned herein shall be subject to all of the conditions, rules and regulations applicable to indi-

viduals and as such subdivisions can act only by their officers and agents in presenting claims for refund they shall be responsible for and bound by the acts and declarations of such officers and agents.

(8) When gasoline is sold to a person who shall claim to be entitled to a refund of the tax imposed, the seller of such gasoline shall make and deliver at the time of such sale separate invoices for each purchase on invoice forms approved by the state board of equalization showing the name and address of the seller and the name and address of the purchaser, the number of gallons of gasoline so sold in words and figures and the date of such purchase, which invoice, attached to the claim presented shall be the only proof upon which a legal claim can be made for a refund based upon such purchase. The seller shall retain the duplicate original invoices for the period of one year from and after the date of issuance, during which period they shall be open to inspection by the state board of equalization and its agents. Such invoices shall be legibly written and shall be void if any corrections or erasures appear on the face thereof.

History: En. Sec. 1, Ch. 17, L. 1927; amd. Sec. 1, Ch. 168, L. 1929; amd. Sec. 1, Ch. 175, L. 1931; amd. Sec. 1, Ch. 96, L. 1937; amd. Sec. 1, Ch. 67, L. 1939; amd. Sec. 1, Ch. 130, L. 1947.

Cross-Reference

Use for aviation purposes, limit of refund, sec. 1-501.

Operation and Effect

Where county brought mandamus to compel state board of equalization to grant county's application for refund of gasoline taxes paid, the entry of a money judgment for the county was error but the court should have ordered a peremptory writ of mandate to issue requiring the board to rescind its action in rejecting

claim and requiring that such claim be allowed in proper sum and transmitted to board of examiners and auditor for approval and payment. *Roosevelt County v. State Board of Equalization*, ___ M ___, 162 P 2d 887, 890.

References

Burgan & Walker Inc. v. State Highway Commission, 114 M 459, 464, 137 P 2d 663; *Grady v. City of Livingston et al.*, 115 M 47, 52, 141 P 2d 346.

Licenses⇒34.

37 C.J. Licenses § 130 et seq.

51 Am. Jur. 1089, Taxation, § 1276.

Refunds of gasoline tax. 47 ALR 998; 84 ALR 868 and 111 ALR 201.

84-1819. (2396.5) Penalty for false statements or unlawfully obtaining refunds. Any person who shall make any false statement in connection with the application for such refund or who shall collect or cause to be repaid to him, or to any other person, any such refund without being entitled to the same under the provisions of this act, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not to exceed the sum of one thousand dollars (\$1,000.00) or by imprisonment in the county jail for not more than six (6) months, or by both such fine and imprisonment.

History: En. Sec. 2, Ch. 17, L. 1927.

84-1820. (2396.6) License and bond of gasoline dealers and distributors. Any gasoline dealer engaged in the business in the state of Montana of producing, refining, manufacturing, compounding or importing into this state gasoline for sale, or purchasing gasoline within this state in quantities of not less than railway tank car lots, when this act becomes effective, shall, within thirty (30) days thereafter, and any other such dealer prior to the commencement of doing business, shall file an application for a license with the state board of equalization on a form prescribed and furnished by said

board setting forth therein such information as may be required by said board. Each gasoline dealer shall at the same time file a corporate surety bond or such collateral security or indemnity as may be deemed sufficient by the state board of equalization, but in no case more than estimated amount of gasoline taxes for two successive months to the effect that said gasoline dealer will pay to the state of Montana all gasoline license taxes, together with penalties and interest, required by law. Upon approval of such application, the state board of equalization shall issue to the gasoline dealer a non-assignable license with a duplicate copy for each place of business of said gasoline dealer in this state, which license shall continue in force until surrendered or cancelled.

No gasoline dealer shall, after thirty (30) days from the effective date of this act, sell, or offer for sale, any gasoline within this state until such license is issued; nor shall any gasoline dealer engage in such business, subsequent to the passage of this act, without first procuring such license.

History: En. Sec. 1, Ch. 157, L. 1933. Licenses 22, 26.
37 C.J. Licenses §§ 95-98, 164.

84-1821. (2396.7) Revocation of license on failure to file statements or pay tax. The state board of equalization is hereby authorized to revoke any license issued under this act immediately upon the failure of any gasoline dealer to make reports or pay the license tax required by law.

History: En. Sec. 2, Ch. 157, L. 1933. Licenses 38.
37 C.J. Licenses § 109 et seq.

84-1822. (2396.8) Violation of act as misdemeanor. Any gasoline dealer failing to comply with, or violating any of the provisions of this act shall be guilty of a misdemeanor.

History: En. Sec. 3, Ch. 157, L. 1933. Licenses 40.
37 C.J. Licenses §§ 151 et seq., 172.

84-1823. (2396.9) Definition of "gasoline dealer." As used in this act the term "gasoline dealer" means and includes every person, firm, association, joint-stock company, syndicate and corporation engaged in the business in the state of Montana of producing, refining, compounding or importing into this state gasoline for sale, or purchasing gasoline within this state in quantities of not less than railway tank car lots.

History: En. Sec. 4, Ch. 157, L. 1933. Licenses 16(9).
37 C.J. Licenses § 78.

84-1824. Use fuel tax permit, when required. From and after the effective date of this act, every person who shall desire to become a user of diesel fuel as herein defined, for the purpose of producing power to propel motor vehicles upon public highways or streets within the state of Montana, shall first secure a use fuel tax permit from the state board of equalization of the state of Montana (hereinafter referred to as the board).

History: En. Sec. 1, Ch. 162, L. 1945.

84-1825. Application for and issuance of permit. Application for such permits shall be made to the board upon forms prescribed by it and furnished to any applicant upon request. Upon receipt of a proper application the board shall issue to the applicant a use fuel tax permit, the form of which shall be prescribed by the board, authorizing the applicant to pur-

chase and use diesel fuel for the purpose of propelling motor vehicles upon public highways and streets within the state of Montana.

History: En. Sec. 2, Ch. 162, L. 1945.

84-1826. Revocation of permits. Whenever any person subject to the terms of this act shall fail to comply with any provision of this act or with any rule or regulation of the board prescribed and adopted under this act, the board, after a hearing and after giving such person ten (10) days' notice in writing of the time and place of such hearing and requiring him to show cause why his permit should not be revoked, may revoke such person's permit for a period of not to exceed one (1) year.

History: En. Sec. 3, Ch. 162, L. 1945.

84-1827. Diesel fuel defined. The words "diesel fuel" as used in this act shall mean and include every substance commonly known and designated by the name "diesel fuel" and shall include every volatile substance of less than forty-six (46) degrees Baume test, when sold or used for the purpose of producing motor power to propel motor vehicles upon any public highways or streets within the state of Montana.

History: En. Sec. 4, Ch. 162, L. 1945.

84-1828. Other terms defined. All other words and terms used in this act, including the words "person", "motor vehicle" and "use" shall, unless otherwise indicated in this act, have the same meaning given to said words by section 84-1801.

History: En. Sec. 5, Ch. 162, L. 1945.

84-1829. Existing statutes not affected by this act. Nothing herein contained shall be deemed to repeal any of the existing laws of Montana relating to the collection of license tax upon diesel fuel as defined herein, but the tax upon all volatile liquids of less than forty-six (46) degrees Baume test shall be collected by the board under rules and regulations prescribed by it as authorized by section 84-1813.

History: En. Sec. 6, Ch. 162, L. 1945.

CHAPTER 19

LICENSE AND OTHER TAX PROCEEDS—HOW DISPOSED OF

Section 84-1901. Moneys from certain designated license and other taxes to be deposited in state general fund and common school equalization fund.

84-1902. Disposal of money collected by certain boards and departments.

84-1903. Fund balances transferred to state general fund.

84-1901. Moneys from certain designated license and other taxes to be deposited in state general fund and common school equalization fund. The state treasurer shall deposit to the credit of the state general fund all moneys received by him on and after July 1, 1941, from the collection of automobile drivers' license fees under section 1741.11, electric energy producers' license taxes under sections 84-1601 to 84-1609, inclusive, metalliferous mines license taxes under sections 84-2001 to 84-2015, inclusive, telegraph license taxes under sections 84-2501 to 84-2508, inclusive, oil producers' license taxes under sections 84-2201 to 84-2211, inclusive, natural gas distributors' license taxes under sections 84-2101 to 84-2110, inclusive, liquor license taxes

84-1901
(S.L. '41, C. 14
Sec. 1)
Ref. to
S.L. '49, C. 199
Sec. 5, P. 478

84-1901
(S.L. 1941
C. 14, Sec. 1)
194 P. (2d) 638
199 P. (2d) 971

under chapter 4 of Title 4, telephone license taxes under sections 84-2601 to 84-2608, inheritance and estate taxes under sections 91-4401 to 91-4459, inclusive, and seventy-five per centum (75%) of all moneys received from the collection of income taxes under sections 84-4901 to 84-4935, inclusive, and corporation license taxes under sections 84-1501 to 84-1519, inclusive, the remaining twenty-five per centum (25%) thereof to be deposited to the credit of the common school equalization fund in order to comply with the provisions of section 1a of article XII of the constitution of the state of Montana; provided, however, that the crediting of such moneys to such common school equalization fund shall have no relation to nor in any manner affect any appropriation made by any legislative assembly for such fund and shall not in any manner limit or restrict any such appropriation unless the amount so credited to such fund from such income tax collections in any one fiscal year shall equal or exceed the budget request for appropriation for such fund for such fiscal year; and the state treasurer shall also deposit to the credit of the state general fund all moneys received by him on and after July 1, 1941, from the collection of license taxes, fees and from all other sources under the operation of the Montana beer act, and being sections 4-301 to 4-356, inclusive, and all net revenues and receipts received by him from and under the operation of the state liquor control act, being sections 4-101 to 4-237.

History: En. Sec. 1, Ch. 14, L. 1941.

NOTE.—Sec. 1741.11, referred to above, was repealed by Sec. 17, Ch. 199, L. 1943.

Board Controls Its Business Funds in State Treasurer's Hands

Held, that in view of the fact that the state, in taking control of the liquor traffic, thereby embarked in a business enterprise, so recognized by the legislature in various

statutes, it seems clear that liquor sales money, until determined to be "net revenues and receipts" under this section, are to be held by the state treasurer as the ex officio liquor board treasurer rather than as treasurer of the state's political funds, as distinguished from its business funds which are under full control of the Board. *Carey v. McFatridge*, 115 M 278, 292, 142 P 2d 329.

84-1902. Disposal of money collected by certain boards and departments. That all moneys collected or received by or paid over to the board of railroad commissioners of Montana, public service commission of Montana, state board of health, milk control board, state auditor and insurance commissioner ex officio, under the provisions of section 82-1231, department of agriculture, labor and industry, or any of the bureaus, divisions, officers or employees of any thereof, and to the state examiner and state forester, by way or on account of fees, licenses, or for any other purpose, on and after July 1, 1941, shall be paid over to the state treasurer who shall deposit the same to the credit of the general fund of the state.

History: En. Sec. 2, Ch. 14, L. 1941.

84-1903. Fund balances transferred to state general fund. Any and all balances remaining in any fund or funds established, created, kept or maintained in the state treasurer's office for any of the license or tax laws, specifically mentioned in section 84-1901, or for any of the departments, or bureaus, or divisions thereof, or for any of the officers specifically mentioned in section 84-1902, or for any of the institutions or departments thereof specifically mentioned in section 79-601, at the close of the fiscal year ending July 1, 1941, shall be, by such state treasurer, immediately after the close

84-1902
(S.L. '41,
C. 14, Sec. 2)
194 P.(2d) 638
199 P.(2d) 971

of such fiscal year, transferred to and shall become a part of the state general fund, excepting moneys for school purposes which under existing law may not be apportioned or distributed until after July 1, 1941.

History: En. Sec. 4, Ch. 14, L. 1941.

CHAPTER 20

LICENSE TAXES—METALLIFEROUS MINES

Section	84-2001.	"Person" defined.
	84-2002.	Persons liable to pay license tax.
	84-2003.	Gross value of products, how determined.
	84-2004.	Amount of tax.
	84-2005.	Statement of gross value of product.
	84-2006.	Computation and notice of tax.
	84-2007.	Delinquent taxes—penalty.
	84-2008.	Procedure in case of failure to file statement.
	84-2009.	False or erroneous statements—investigation concerning.
	84-2010.	Rehearing on determination of value of gross product or amount of tax.
	84-2011.	Lien of tax.
	84-2012.	License.
	84-2013.	Commencing business.
	84-2014.	Additional to other taxes.
	84-2015.	Unconstitutionality or invalidity.
	84-2016.	Dissolved corporations to make returns on operation of mines and pay metals mines tax due.

84-2001. (2344.1) "Person" defined. The term "person," as used in this act shall mean and include any individual, firm, co-partnership, association, joint stock company, common law company, business trust, syndicate, and corporation.

History: En. Sec. 1, Initiative No. 28, 1925.

Constitutionality

If an act deals with matters germane to the subject expressed in its title and the title is not of such character as to mislead the public or the members of the legislature, the constitutional requirement with relation to the contents of the title (sec. 23, art. V, const.) is sufficiently complied with; where the general object is plainly expressed in the title it is not necessary that it should embody the exact methods of application or procedure, and courts should not embarrass legislation by technical interpretation based upon mere form or phraseology. *State v. State Board of Equalization*, 93 M 19, 25 et seq., 17 P 2d 68.

Id. Under the above, held, that the assertion that initiative measure No. 28 (this chapter) is unconstitutional if the contention that arsenic or arsenious oxide is taxable under initiative measure No. 28 be upheld, in that that product is not mentioned in its title, may not be sustained.

Nature of Tax

The tax provided by this chapter is not a property tax—on metals, minerals or mine products—but an occupational license tax, i.e., upon the business of producing metals or precious stones, based upon annual production. *State v. State Board of Equalization*, 93 M 19, 25 et seq., 17 P 2d 68.

Repealed Sections 2344-2355

Construing initiative measure No. 28 (this chapter), providing for a gross proceeds of mines tax, specifically repealing sections 2344-2355, revised codes of 1921, providing for a net proceeds of metalliferous mines tax, held, that the contention that measure No. 28 is simply amendatory of the net proceeds act may not be sustained, that act by its repeal having been blotted out as completely as though it had never existed, a new and different act taking its place. *State v. State Board of Equalization*, 93 M 19, 25 et seq., 17 P 2d 68.

Licenses—11(1).

37 C.J. Licenses § 72.

84-2002. (2344.2) Persons liable to pay license tax. Every person who engages in or carries on the business of working or operating any mine or

mining property in the state of Montana from which gold, silver, copper, lead or any other metal or metals, or precious or semi-precious gems or stones of any kind shall be mined, extracted or produced, whether such person shall carry on such business or engage in such work or operations as owner, lessee, trustee, possessor, receiver, or in any other capacity, must for the year 1925, and each year thereafter, when engaged in or carrying on such business, work or operations, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business, work or operation in this state, and shall pay to such state treasurer for such annual license the taxes hereinafter prescribed, provided, however, that nothing contained in this act shall be construed as requiring laborers or employees hired or employed by any person to mine or to work in or about any mine or mining business or property, to procure such license or to pay such license taxes, nor shall any discovery work required to be done in prospecting for or locating any mining claims, or any annual assessment work, or work required in the obtaining of title to mining property from the United States, or required by the laws of the United States or of this state in order to hold possessory title to any mining claims, be deemed the engaging in or carrying on of the business of working or operating any such mine or mining property.

History: En. Sec. 2, Initiative No. 28, 33 Am. Jur. 321, Licenses, generally. 1925.

84-2003. (2344.3) Gross value of products, how determined. The total "gross value of product" as used in this act, shall mean the market value of all merchantable metals, precious and semi-precious gems and stones extracted or produced, each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction or treatment of any such ores. That whenever the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents, without any deductions for costs of smelting, reduction or treatment, or otherwise, based upon the average quotations of the price of such metals, or mineral products, in the city of New York, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or other standard publications, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, in such a manner as may seem equitable.

History: En. Sec. 3, Initiative No. 28, 1925.

Construction of Provision of Act Prohibiting Deductions in Fixing Tax for Smelting, Reduction "or Otherwise"

Held, as against the contention that since this section prohibits "any deduc-

tions for costs of smelting, reduction or treatment, or otherwise," differentials incident to the expense of placing metals or mineral products at the point of demand are not permissible, that the design of the act being to tax the gross value recovered from the smelting, reduction or treatment of the ores, the words "or otherwise" re-

late to whatever expense is incurred in making the gross product. *State v. State Board of Equalization*, 93 M 19, 25 et seq., 17 P 2d 68.

Market Value in Montana, Not in New York, Taxable

Held, that under this section, which declares that the amount of the license tax exacted by it of operators of metalliferous mines shall be determined by ascertaining the market value of the gross product resulting from the smelting, reduction or treatment of the ore, based upon the average quotations of the price of the metals or mineral products in New York City, their market value in Montana, not that

prevailing in New York, is taxable. *State v. State Board of Equalization*, 93 M 19, 25 et seq., 17 P 2d 68.

New York Price is Basis

Held, that since, under this section, it is contemplated that in fixing the market value of zinc the New York price shall be considered as a basis, the State Board of Equalization in fixing it upon the basis of the price of the metal in St. Louis, did so in violation of the act. *State v. State Board of Equalization*, 93 M 19, 25 et seq., 17 P 2d 68.

Licenses ⇨ 30.

37 C.J. Licenses § 117.

84-2004. (2344.4) Amount of tax. The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, shall be one dollar, together with an additional sum or amount equal to an amount computed on the gross value of product which may have been derived by such person from such business, work or operation within this state during the calendar year immediately preceding, at the following rates:— $\frac{1}{4}$ of 1% of the amount by which such gross value of products exceeds \$100,000.00 and does not exceed \$250,000.00; $\frac{1}{2}$ of 1% of the amount by which such gross value of product exceeds \$250,000.00 and does not exceed \$400,000.00; $\frac{3}{4}$ of 1% of the amount by which the gross value of product exceeds \$400,000.00 and does not exceed \$500,000.00 and 1% of the amount by which the gross value of product exceeds \$500,000.00.

History: En. Sec. 4, Initiative No. 28, 1925.

Licenses ⇨ 29.

37 C.J. Licenses § 116.

84-2005. (2344.5) Statement of gross value of product. Every person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones are produced, must, not later than the fifteenth day of April, in such year when engaged in or carrying on any such business, work or operation, make out a statement of the gross value of product from all mines and mining properties worked or operated by such person during the calendar year immediately preceding. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person, or the manager, superintendent, agent, president or vice-president of the corporation, joint stock or other company or syndicate and must be delivered to the state board of equalization not later than the fifteenth day of April. Such statement shall show the following:

1. The name and address of the owner or lessee of the mine or mining property.
2. The description and location of the mine or mining property.
3. The number of tons of ore or other mineral products or deposits extracted from the mine or mining property during the period covered by the statement.

4. The name and location of the smelter, mill or reduction works to which such ore has been shipped or sold during the period covered by the statement and such other information as the state board of equalization may require.

5. The gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold or silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by the statement.

6. The gross value of product in dollars and cents.

History: En. Sec. 5, Initiative No. 28, 1925.

84-2006. (2344.6) Computation and notice of tax. The state board of equalization shall examine each such statement and return filed and determine and ascertain therefrom, and compute and assess the amount of the license tax to be paid by the person making and filing the same, and shall, not later than the first day of June, certify to the state treasurer the name of each person subject to the payment of license taxes under the provisions of this act, the amount thereof to be paid by such person. The said board shall at the same time mail to each person making and filing such statement and return, a written notice of the amount of the license tax to be paid by each, respectively, that the same is due and payable to the state treasurer, and that it will become delinquent at five o'clock p. m. on the thirtieth day of November, immediately following, and that if the same becomes delinquent a penalty of ten per centum will be added thereto, and that the whole amount of such license tax, with penalty added, will bear interest at the rate of twelve per centum per annum from the date the same becomes delinquent until paid. If any such person, has sold or otherwise disposed of any of its mine's products at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, at the time such portion of the product was so sold or otherwise disposed of as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York, or some other standard publication, giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 6, Initiative No. 28, 1925.

84-2007. (2344.7) Delinquent taxes — penalty. All license taxes assessed under the provisions of this act shall become delinquent if not paid by five o'clock p. m., on the thirtieth day of November following the date when the same are assessed and certified to the state treasurer, and as the

same become delinquent a penalty of ten per centum shall be added thereto, and the whole amount of said license tax, with penalty added, shall bear interest at the rate of twelve per centum per annum from the date of becoming delinquent until paid.

History: En. Sec. 7, Initiative No. 28, 1925.

84-2008. (2344.8) Procedure in case of failure to file statement. If any person shall fail, refuse or neglect to make and file such statement and return within the time prescribed, the state board of equalization, shall, immediately after such time has expired, ascertain and determine as nearly as may be possible from any returns or reports filed with any state or county officer or board under any law of this state, and from any other information which the board may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the license tax is to be paid, and license issued, and shall make and file a statement showing the amount of such gross value of product and shall ascertain and determine and compute and assess the amount of the license taxes due from, and to be paid by such person, and shall immediately certify the same to the state treasurer, and give notice to such person in the same manner as though such statement had been filed within time, and the state shall proceed to collect such license tax, adding thereto and collecting therewith, if the same is delinquent, the same penalty and interest as provided for herein for other delinquencies.

History: En. Sec. 8, Initiative No. 28, 1925.

84-2009. (2344.9) False or erroneous statements—investigation concerning. (1) Should the state board of equalization have reason to believe that any statement and return is false, or erroneous in any particular, it may require the person, or if made by a corporation, association or company, the officers thereof, and the employees of any such person, corporation, association or company, to appear before the board and testify concerning the same and any statement contained therein, and may examine all books, records, papers and documents of such person pertaining to such business, upon giving five days' written notice to such persons, or officers or employees thereof having custody of such books, records, papers and documents, and any person failing, refusing or neglecting to so appear, or refusing to be sworn or to testify, or refusing to answer any material question propounded by the board or any of its members, or refusing to permit the board, or its members, employees or accountants to examine such books, records, papers or documents, or any thereof, pertaining to such business, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for a term not exceeding six months, or by both such fine and imprisonment. If the board, after hearing such evidence and after such examination of the books, papers, documents and records of such person, shall find and determine that such statement and return is erroneous or false in any material matter, the board shall change and correct the same so as to show the true gross value of product and shall re-assess the amount of the license tax due from such person, and may add thereto a penalty of

not exceeding fifty per centum, and shall thereupon immediately certify the amount of such license tax with the penalty added thereto to the state treasurer, and shall at the same time mail to such person a written notice of the corrections and changes made in such statement and return and the amount of the license tax and penalty certified to the state treasurer.

(2) The state treasurer shall collect such license tax with penalty added, and if the same has become delinquent he shall also collect interest thereon from the date of delinquency until paid at the rate of twelve per centum per annum. Provided further, that in order to verify such statement and return the state board of equalization may require any person, corporation, association, or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced from any mine or mining property in the state of Montana to appear before the board and testify concerning the gross mineral content of any such ore, or at the request of said board to furnish sworn statements showing the gross yield of such ores, mineral products or deposits in constituents of commercial value, that is to say, the number of ounces of gold, silver, pounds of copper, lead or zinc, or other commercially valuable constituents of said ores or mineral products or deposits, measured by standard units of measurement during the period covered by such statement, without any deductions whatsoever for smelting, milling, reduction or treatment of such ores or mineral product.

(3) The books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana shall be open to inspection and examination by the said state board of equalization, or its members, employees, or accountants at any time or place, that said board may designate.

(4) If any person required by this act to make or file any statement, or to verify, under oath any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any respect or shall fail, neglect or refuse to file any statement required by said state board of equalization or shall refuse to appear before the board to testify concerning the gross mineral content of any such ore, or shall refuse to allow the board, its members, employees or accountants at any time or place to inspect or examine the books, records, papers and documents of such person, corporation, association or company engaged in the business of smelting, milling, reduction or treatment in any manner of ores extracted or produced by any mine or mining property in the state of Montana, shall be deemed guilty of a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 9, Initiative No. 28, Licenses 30, 40, 41.
1925. 37 C.J. Licenses §§ 117, 145 et seq., 151 et seq.

84-2010. (2344.10) Rehearing on determination of value of gross product or amount of tax. Every person whose license tax has been determined

and assessed by the state board of equalization under any of the provisions of this act, who shall feel aggrieved by the determination and assessment of the board as to the amount of gross value of product, or as to the amount of the license tax, may, at any time within ten days after the date of notice thereof, required to be given to such person, file with the board a petition for a rehearing in which petition must be stated and set forth particularly and specifically the grounds and reasons therefor, and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the board therefrom that the board has erred in any manner in ascertaining and determining the amount of the gross value of product, or the amount of the license tax, or both, the board shall immediately correct such error, or errors, and if such correction shall be in conformity with the request contained in the petition for a rehearing the board shall take no further steps in connection with such petition, other than to certify to the state treasurer the amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If, from such examination, it does not appear to the satisfaction of the board that it has erred in any manner the board shall grant such rehearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board may deem reasonable. On such hearing such person, any taxpayer interested, and the board may introduce witnesses and take testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product, and re-assess the amount of the license tax to be paid by such person, and give notice thereof in the manner required by section 84-2006.

History: En. Sec. 10, Initiative No. 28, 1925.

84-2011. (2344.11) Lien of tax. The license tax assessed against any person under this act, together with all penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state and used by such person in connection with such business, which lien shall attach to such property on the date when the license tax is certified to the state treasurer by the state board of equalization and such lien may be enforced in the name of the state of Montana, in the same manner as other liens are enforced at law.

History: En. Sec. 11, Initiative No. 28, 1925.

Licenses \hookrightarrow 31.
37 C.J. Licenses § 118.

84-2012. (2344.12) License. Whenever any license tax is paid under the provisions of this act the state board of equalization shall issue to the person paying the same a license authorizing such person to engage in and carry on such business until the first day of January immediately following the year for which such license tax is paid and such license issued.

History: En. Sec. 12, Initiative No. 28, 1925; amd. Sec. 7, Ch. 14, L. 1941.

Licenses \hookrightarrow 33.
37 C.J. Licenses § 129.

84-2013. (2344.13) Commencing business. If any person shall, after the first day of January of any year, engage in or commence the carrying

on of the business of working or operating a mine or mining property in this state, from which any merchantable metal, precious, and semi-precious gems and stones are extracted and produced, such person, must, within sixty days after so engaging in or commencing to carry on such business, notify both the state board of equalization and the state treasurer of such fact.

History: En. Sec. 13, Initiative No. 28, 1925.

84-2014. (2344.14) Additional to other taxes. The license taxes herein provided for shall be in addition to all other taxes, licenses, and other fees, now required to be paid by persons subject to the provisions of this act.

History: En. Sec. 14, Initiative No. 28, 1925.

84-2015. (2344.15) Unconstitutionality or invalidity. If any clause, sentence, paragraph or part of this act shall for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of the act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof, directly involved in the controversy in which such judgment shall have been rendered. No caption or any section or set of sections shall in any way affect the interpretation of this act, or of any part thereof.

History: En. Sec. 16, Initiative No. 28, Statutes 64(8).
1925. 59 C.J. Statutes §§ 214, 215, 220.

84-2016. Dissolved corporations to make returns on operation of mines and pay metals mines tax due. Every corporation which shall be dissolved or cease to do business in this state during any taxpaying year shall make all statements, reports and returns required by law to be made with reference to the carrying on of the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead or any other metal or metals, precious or semi-precious gems or stones, are produced and pay the tax due for such period as it carried on such business, on or before the date of such dissolution or cessation of business. The state board of equalization may grant a reasonable extension of time for filing returns upon good cause shown therefor.

History: En. Sec. 1, Ch. 11, L. 1941.

CHAPTER 21

LICENSE TAXES—NATURAL GAS DISTRIBUTORS

- Section 84-2101. Definition of "person."
84-2102. Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act.
84-2103. Time for payment of tax.
84-2104. Certificate to be filed with board—time for filing—contents of certificate.
84-2105. Records to be kept as required by board.
84-2106. Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by board—adjustment of excess payment or deficit.
84-2107. Falsification or failure to file statements unlawful.
84-2108. Board to determine tax if no statement filed—penalty and interest—collection of tax.
84-2109. Violations of provisions of act deemed misdemeanor—penalty.
84-2110. Additional to other taxes and fees.

84-2101. (2408.1) Definition of "person." The term "person," as used in this act, shall mean and include any individual, firm, co-partnership and every corporation, joint stock company, syndicate and association.

History: En. Sec. 1, Ch. 180, L. 1933. Gas \Rightarrow 10.
38 C.J.S. Gas § 4.

84-2102. (2408.2) Natural gas distributors' license tax—amount—standard for measurement of gas distributed—persons not contemplated by act. Every person engaged in or carrying on the business of distributing to the public within this state, natural gas, produced, or not produced within this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within the state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to the public within this state for the purpose of use outside this state, or engaged in or carrying on the business of owning, controlling, managing, leasing or operating within this state, any system or plant for the distribution of natural gas, produced, or not produced within this state, to the public within this state must, for the year 1934, and each year thereafter when engaged in carrying on such business in this state, pay to the state treasurer for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business an amount equal to three-eighths ($\frac{3}{8}$) of one (1) cent for each one thousand (1000) cubic feet of such natural gas, produced within this state, or not produced within this state, and distributed by such person to the public within this state, during such year, or conveyed through a pipe line to a point outside this state during such year, except in connection with the operating of natural gas wells from which the same was extracted or produced, or delivered by such person to any other person for sale, and that the standard or base pressure to be used in the measurement of such gas so distributed for determining the amount of license tax imposed hereunder, shall be ten (10) ounces above an atmospheric pressure of fourteen (14) and four-tenths ($\frac{4}{10}$) pounds per square inch, and at a temperature of sixty (60) degrees Fahrenheit, regardless of the atmospheric pressure and temperature at the point of measurement, and all measurements of gas shall be reduced, by computation, to these standards no matter what may have been the pressure and temperature at which gas was actually produced or measured; provided, however, that nothing in this act shall be construed as requiring laborers, employees, hired or employed, by any person to work on or about, or in connection with any natural gas well property or business, to pay such license taxes, nor shall any work required to be done in prospecting, or in developing, or opening up any natural gas property or plant, be deemed to be carrying on of natural gas business, or engaging in the business of working or operating of a natural gas well or plant; provided further, that if during any such work of developing any natural gas property, any marketable natural gas shall be extracted or produced and sold, then the same shall be deemed the carrying on of a natural gas business of distributing to the public.

History: En. Sec. 2, Ch. 180, L. 1933; NOTE.—In *State v. Montana-Dakota and. Sec. 1, Ch. 52, Ex. L. 1933.* Utilities Co., 114 M 161, 174, 133 P 2d 354,

so much of the above section as purported to authorize a tax on gas produced within the state and "conveyed for use outside the state," was held unconstitutional and is therefore omitted from this code.

Constitutionality

Held, in an action by the state against a public utility engaged in distribution of natural gas through a pipe line, that this section is void in so far as it purports to

impose a license tax on persons engaged in, or carrying on the business of conveying through a pipe line gas produced within this state for use outside the state as imposing a burden upon interstate commerce, in conflict with art. I, sec. 8, of the constitution of the United States. *State v. Montana-Dakota Utilities Co.*, 114 M 161, 171, 133 P 2d 354.

33 Am. Jur. 321, Licenses, generally.

84-2103. (2408.3) Time for payment of tax. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively, March 31, June 30, September 30 and December 31 in each year, beginning with the quarter ending March 31, 1933, and the amount of license tax due for each quarter shall be paid to the state treasurer within thirty (30) days after the end of each such quarter.

History: En. Sec. 3, Ch. 180, L. 1933.

84-2104. (2408.4) Certificate to be filed with board—time for filing—contents of certificate. Each and every person engaged in any such business in the state of Montana at the time when this act becomes effective must not, later than the thirtieth day of April, 1933, and every person who shall engage in any such business at any time after the date when this act becomes effective, immediately, upon engaging in any such business, file with the state board of equalization a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaged in carrying on such business in this state, giving the place or places of business and the location of the well or wells, plant or property, owned, leased, controlled or operated by such person in such business; the name and address of the managing agent in this state if an association, corporation, joint stock company or syndicate, or if a firm or co-partnership, the names and addresses of the persons composing the same, of an association, joint stock company, corporation or syndicate, the laws of the state under which organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 4, Ch. 180, L. 1933.

84-2105. (2408.5) Records to be kept as required by board. Every such person shall keep a record, in such form as the state board of equalization may require, of all natural gas extracted or produced, transported or carried, sold, furnished or delivered by such persons in this state and such records shall at all times during the business hours of the day, be subject to inspection of the state board of equalization, its members, agents or employees.

History: En. Sec. 5, Ch. 180, L. 1933.

84-2106. (2408.6) Statement of distributed gas—payment of tax—state treasurer's duty—examination and computing of tax by board—adjustment of excess payment or deficit. (1) Each and every person must, within thirty (30) days after the quarterly period ending March 31, 1933, and

within thirty (30) days after the end of each following quarterly period, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the quantity of merchantable or marketable gas produced or extracted, transported or carried, sold, furnished or delivered by such person in the state of Montana during each month of each quarterly period and during the whole of said quarterly period, together with the total amount due the state as license tax for such quarterly period; and must, within such thirty (30) days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license tax shown by such statement to be due to the state of Montana for the quarterly period for which such statement is made; such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer or managing agent in this state of the association, corporation, joint stock company or syndicate making the same. Any such person engaged in or carrying on such business at more than one (1) place in this state, or owning, controlling or operating more than one (1) natural gas well or plant for the distribution of natural gas in this state, may include all thereof in one (1) statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him, the amount of tax payable by such person, if any, as the same shall appear from the face of the statement. The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, and the name and post office address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year.

(2) The state treasurer shall keep a book in such form as shall be approved by the state board of equalization, in which he shall enter such statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return and the amount of tax, if any, paid by such person, which book shall be designated "state treasurer's record of natural gas license tax." The state treasurer shall within ten (10) days after the end of each month deliver over to the state board of equalization all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state board of equalization.

(3) It shall be the duty of the state board of equalization to examine each of such statements and compute the taxes thereon, and the amount so computed by the board shall be the taxes imposed, assessed against and payable by the person making the statement for the quarterly period for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state board of equalization within ten (10) days after written notice of the amount of the deficiency shall be mailed by the state board of equalization to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 6, Ch. 180, L. 1933.

84-2107. (2408.7) Falsification or failure to file statements unlawful.

It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular way.

History: En. Sec. 7, Ch. 180, L. 1933.

84-2108. (2408.8) Board to determine tax if no statement filed—penalty and interest—collection of tax. If any such person shall fail, neglect or refuse to file any statement required by the provisions of this act within the time therein required, the state board of equalization shall immediately after such time has expired, proceed to inform itself, as best it may, regarding the quantity of natural gas extracted and produced, transported or carried, sold, furnished or delivered by such person in this state during such quarterly period and during each month thereof, and shall determine and fix the amount of the license tax due the state from such person for such quarterly period and shall make out a statement, in duplicate, showing the same and shall add to the amount of such license tax a penalty of twenty-five (25) per cent thereof and deliver one (1) of such statements to the state treasurer, who shall proceed to collect the amount of such license tax, with penalty added thereto, and interest on the whole thereof at the rate of twelve (12) per cent per annum from the date of making such statement by the state board of equalization, until paid.

Upon the request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law for the collection of the same.

History: En. Sec. 8, Ch. 180, L. 1933.

84-2109. (2408.10) Violations of provisions of act deemed misdemeanor—penalty. Any violation of any of the provisions of this act shall be deemed a misdemeanor and shall be punished by a fine of not exceeding one thousand dollars (\$1000), or imprisonment in the county jail not exceeding six (6) months, or both such fine and imprisonment.

History: En. Sec. 10, Ch. 180, L. 1933.

84-2110. (2408.11) Additional to other taxes and fees. The license tax herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 11, Ch. 180, L. 1933.

CHAPTER 22

LICENSE TAXES—OIL PRODUCERS

Section	84-2201.	"Person" defined.
	84-2202.	Oil producers' license tax—amount—exceptions.
	84-2203.	Payment of tax.
	84-2204.	Determination of gross value of product.
	84-2205.	Producers to file reports.
	84-2206.	Record of product—carriers to furnish data.
	84-2207.	Statement to accompany payment—records—collection of tax—refunds.
	84-2208.	Falsifying or failing to file statements unlawful.
	84-2209.	Procedure to compute and collect tax in absence of statement.
	84-2210.	Penalty for violation of act.
	84-2211.	License tax supplemental.

84-2201. (2397) "Person" defined. The term "person," as used in this act, shall mean and include any individual, firm, co-partnership, and every corporation, joint-stock company, syndicate and association.

History: En. Sec. 1, Ch. 266, L. 1921; re-en. Sec. 2397, R. C. M. 1921.

Cross-Reference

Tax on crude petroleum, sec. 60-118.

Injunction Restraining Collection

Where in 1936 the supreme court granted an injunction to an oil and gas company "forever" restraining and enjoining the state board of equalization from levying or collecting certain taxes upon oil and gas produced under a lease of trust patent Indian land, but the board in 1941 believing that a later decision of the supreme court of the United States superseded and overruled the former decision and took steps to collect the taxes, the oil company

should have proceeded under sec. 93-9801 subd. 5 instead of instituting a new proceeding, which was properly dismissed. Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 224, 225, 114 P 2d 521.

References

Mid-Northern Oil Co. v. Walker et al., 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co. et al., 83 M 353, 356, 272 P 534; Byrne v. Fulton Oil Co., 85 M 329, 340, 278 P 514; Northern Pacific Railway Co. v. Gas Development Co., 103 M 214, 217, 62 P 2d 204; Santa Rita Oil & Gas Co. v. State Board of Equalization, 112 M 359, 362, 116 P 2d 1012.

84-2202. (2398) Oil producers' license tax — amount — exceptions.

Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil is extracted or produced, sufficient in quantity to justify the marketing of the same, must, for the year 1923, and each year thereafter, when engaged in or carrying on any such business in this state, pay to the state treasurer, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business in an amount equal to two per centum of the total gross value of all petroleum and other mineral or crude oil produced by such person within this state during such year; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such license tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

History: En. Sec. 2, Ch. 266, L. 1921; re-en. Sec. 2398, R. C. M. 1921; amd. Sec. 1, Ch. 67, L. 1923.

Estate in Land Held Taxable

Oil and gas leases on Indian lands held under trust patent, in which the oil and gas was reserved for the benefit of the tribe, created an estate in land distinct and separate from the interest held by the Federal government, which estate was subject to operators' net proceeds tax and the gross production tax. *British-American Oil Producing Co. v. State Board of Equalization*, 101 M 293, 302, 54 P 2d 129.

Land Leased from United States

Held, that an oil company operating under leases from the United States government and assigned to it, under the terms of which the lessees were given the exclusive right to explore for, extract and dispose of oil and gas in lands covered by homestead entries for which patents had not issued, is not such an agency or instrumentality of the federal government as to render the license or occupation tax imposed by this chapter, invalid. *Mid-Northern Oil Co. v. Walker et al.*, 65 M 414, 420, 211 P 353.

License Tax

The tax of one per cent of the gross value of crude oil exacted from persons engaged in producing petroleum within the state, by chapter 266, laws of 1921 (84-2201 to 84-2211), is not a property tax or imposed for regulatory purposes under the police power, but is a revenue measure and the exaction is a license or occupation tax. *Mid-Northern Oil Co. v. Walker et al.*, 65 M 414, 420, 211 P 353. Affirmed, 268 US 45, 69 L. ed. 841, 45 Sup. Ct. 440.

84-2203. (2399) Payment of tax. Such license tax shall be paid in quarterly installments for the quarterly periods ending respectively March 31, June 30, September 30 and December 31, of each year, and the amount of the license tax for each quarterly period shall be paid to the state board of equalization within thirty (30) days after the end of each quarterly period.

History: En. Sec. 3, Ch. 266, L. 1921; re-en. Sec. 2399, R. C. M. 1921; amd. Sec. 2, Ch. 67, L. 1923; amd. Sec. 3, Ch. 14, L. 1941.

References

Mid-Northern Oil Co. v. Walker et al., 65 M 414, 420, 211 P 353; *Norum v. Ohio*

State May Tax Production Under Lease of Trust Patent Indian Land

Held, that the state board of equalization is authorized to levy the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 101 M 268, 288, 54 P 2d 117, with exception of the royalty owner's net proceeds tax, for the reason that the federal supreme court overruled its holdings upon which the state court's former opinion was based.) *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 112 M 359, 361, 116 P 2d 1012.

Tax Payable by Lessee or Operator

Held, under this section, imposing a license tax upon persons engaged in carrying on the business of producing crude oil within the state of two per centum of the total gross value of oil produced, that the tax is payable by the lessee or operator and not by the land owner or lessor. *Norum v. Ohio Oil Co. et al.*, 83 M 353, 356, 272 P 534.

The operator of an oil-well is without right to withhold from the holder of a royalty interest the two per cent oil producer's license tax provided for by this section, such tax being payable by him and not the royalty holder. *Byrne v. Fulton Oil Co.*, 85 M 329, 340, 278 P 514.

References

Northern Pacific Railway Co. v. Gas Development Co., 103 M 214, 217, 62 P 2d 204.

Licenses—11(1), 29.

37 C.J. Licenses §§ 73, 116.

33 Am. Jur. 321, Licenses, generally.

84-2203
(S.L. '41,
C. 14, Sec. 8)
194 P. (2d) 638
199 P. (2d) 977

Oil Co. et al., 83 M 353, 356, 272 P 534; *Byrne v. Fulton Oil Co.*, 85 M 329, 340, 278 P 514. See annotations under section 84-2202.

Licenses—32(1), 33.

37 C.J. Licenses §§ 119 et seq., 129.

84-2204. (2400) Determination of gross value of product. The total gross value of all petroleum, and other mineral or crude oil produced each year shall be determined by taking the total number of barrels thereof pro-

duced each month during such year at the average value at the mouth of the well during the month the same is produced, as determined by the state board of equalization; provided, however, that in computing the total number of barrels of petroleum, and other mineral or crude oil produced, there shall be deducted therefrom so much thereof as is used by such person in connection with the operation of the well from which said oil is produced or for pumping said petroleum or other mineral or crude oil from the said well to a tank or pipe line.

History: En. Sec. 4, Ch. 266, L. 1921; re-en. Sec. 2400, R. C. M. 1921; amd. Sec. 3, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker et al., 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co. et al., 83 M 353, 356, 272 P 534.

84-2205. (2401) Producers to file reports. Each and every person engaged in such business in the state of Montana at the date when this act becomes effective, must, not later than the thirtieth day of April, 1923, and every person who shall engage in such business at any time after the date when this act becomes effective, must, immediately upon engaging in such business, file with the state board of equalization, a certificate and statement, on forms prescribed by the state board of equalization, which shall contain the name under which such person is engaging in and carrying on such business in this state, giving the place or places of business and location of the well or wells owned, leased, controlled or operated by such person; the name and address of the managing agent in this state, if an association, corporation, joint-stock company, or syndicate, or if a firm or co-partnership, the names and addresses of the persons composing the same; if an association, joint-stock company, corporation or syndicate, under the laws of what state organized, its principal place of business, and the names and addresses of its principal officers; and such other information as the board may deem necessary.

History: En. Sec. 5, Ch. 266, L. 1921; re-en. Sec. 2401, R. C. M. 1921; amd. Sec. 4, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker et al., 65 M 414, 420, 211 P 353; Norum v. Ohio Oil Co. et al., 83 M 353, 356, 272 P 534.

84-2206. (2402) Record of product—carriers to furnish data. Every such person shall keep a record in such form as the state board of equalization may require, of all petroleum and other mineral or crude oil extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the state board of equalization, its members, agents, or employees. It shall be the duty of railroad companies, pipe line and transportation companies carrying crude or mineral oil, to furnish to the state board of equalization, whenever requested so to do, all data relative to the shipment of said products, that may be required to properly enforce the provisions of this act. The failure of any railroad company, pipe line, and transportation companies to comply with the provisions of this section shall make such companies liable to a penalty of one hundred (\$100.00) dollars for each day it shall fail to furnish such statement.

History: En. Sec. 6, Ch. 266, L. 1921; re-en. Sec. 2402, R. C. M. 1921; amd. Sec. 5, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker et al.,

65 M 414, 420, 211 P 353; *Norum v. Ohio*
Oil Co. et al., 84 M 353, 356, 272 P 534.

Licenses \S 30, 41.
37 C.J. Licenses \S 117, 145 et seq.

84-2207. (2403) **Statement to accompany payment—records—collection of tax—refunds.** (1) Each and every person must, within thirty days after the quarter ending March 31, 1923, and within thirty days after the end of each following quarter, make out, in duplicate, on forms prescribed by the state board of equalization, and deliver to the state treasurer, a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as license taxes for such quarter; and must, within such thirty days, and at the same time such statement is delivered to the state treasurer, pay to the state treasurer the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil well in this state, may include all thereof in one statement. The state treasurer shall receive and file all such statements and collect and receive from such person making and filing a statement with him the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) The state treasurer shall endorse on each statement as soon as the same is received by him, the date when so received, the name and postoffice address of the person from whom received; and the amount of tax, if any, paid by such person; and he must number such statement consecutively, beginning with number one (1) for each year followed by the year. The state treasurer shall keep a book in such form as shall be approved by the state board of equalization, in which he shall enter each statement filed with him in the order in which received and filed, the number thereof, date of filing, name of person making the return, and the amount of tax, if any, paid by such person, which book shall be designated "state treasurer's record of oil production license tax."

(3) The state treasurer shall within ten days after the end of each month deliver over to the state board of equalization all statements filed with him and not already delivered to said board, and such statements shall then be filed in the office of, and become a part of the records of the state board of equalization. It shall be the duty of the state board of equalization to examine each of such statements and compute the taxes thereon, and the amount so computed by the board shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the state board of equalization within ten days after written notice of the amount of

the deficiency shall be mailed by the board of equalization to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be refunded to the person making such payment.

History: En. Sec. 7, Ch. 266, L. 1921;
re-en. Sec. 2403, R. C. M. 1921; amd. Sec.
6, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker et al.,
65 M 414, 420, 211 P 353; Norum v. Ohio
Oil Co. et al., 83 M 353, 356, 272 P 534.

84-2208. (2404) Falsifying or failing to file statements unlawful. It shall be unlawful for any such person to fail, neglect or refuse to file any statement or certificate required by this act in the manner or within the time herein required, or to make such statement false in any particular.

History: En. Sec. 8, Ch. 266, L. 1921;
re-en. Sec. 2404, R. C. M. 1921; amd. Sec.
7, Ch. 67, L. 1923.

References

Mid-Northern Oil Co. v. Walker et al.,
65 M 414, 420, 211 P 353; Norum v. Ohio
Oil Co. et al., 83 M 353, 356, 272 P 534.

84-2209. (2405) Procedure to compute and collect tax in absence of statement. If any such person shall fail, neglect or refuse to file any statement required by section 84-2207, within the time therein required, the state board of equalization shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the number of barrels of petroleum and other mineral or crude oil extracted and produced by such person in this state during such quarter, and during each month thereof, and the average value thereof during each such month, and shall determine and fix the amount of the license taxes due to the state from such person for such quarter and shall make out a statement, in duplicate, showing the same, and shall add to the amount of such license taxes a penalty of twenty-five per cent thereof, and deliver one of such statements to the state treasurer, who shall proceed to collect the amount of such license taxes, with the penalty added thereto and interest on the whole thereof at the rate of twelve per cent, per annum from the date of the making of such statement by the state board of equalization until paid. Upon request of the state treasurer, it shall be the duty of the attorney general to commence and prosecute to final determination in any court of competent jurisdiction, an action at law to collect the same.

History: En. Sec. 9, Ch. 266, L. 1921;
re-en. Sec. 2405, R. C. M. 1921; amd. Sec.
8, Ch. 67, L. 1923.

65 M 414, 420, 211 P 353; Norum v. Ohio
Oil Co. et al., 83 M 353, 356, 272 P 534;
Shubat v. Glacier County et al., 93 M 160,
165, 18 P 2d 614.

References.

Mid-Northern Oil Co. v. Walker et al.,

84-2210. (2407) Penalty for violation of act. Any violation of any of the provisions of this act shall be deemed a misdemeanor, and shall be punished by a fine of not exceeding one thousand dollars, or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment.

History: En. Sec. 11, Ch. 266, L. 1921;
re-en. Sec. 2407, R. C. M. 1921.

65 M 414, 420, 211 P 353; Norum v. Ohio
Oil Co. et al., 83 M 353, 356, 272 P 534.

References

Mid-Northern Oil Co. v. Walker et al.,

Licenses 40.

37 C.J. Licenses §§ 151 et seq., 172.

84-2211. (2408) License tax supplemental. The license taxes herein provided for shall be in addition to all taxes and other fees now required to be paid by the persons subject to the provisions of this act.

History: En. Sec. 12, Ch. 266, L. 1921; 65 M 414, 420, 211 P 353; *Norum v. Ohio Oil Co. et al.*, 83 M 353, 356, 272 P 534.

References

Mid-Northern Oil Co. v. Walker et al.,

Licenses 28.

37 C.J. Licenses § 114.

CHAPTER 23

LICENSE TAXES—SLEEPING CAR COMPANIES

Section	84-2301.	Definitions.
	84-2302.	Reports.
	84-2303.	Assessment.
	84-2304.	Method of determining valuation.
	84-2305.	Notice of hearing concerning valuation—right to appear and be heard.
	84-2306.	License tax—amount—levy—notice—payment.
	84-2307.	Failure to report—nonpayment—action for collection.
	84-2308.	Estoppel—excusing failure to file report.
	84-2309.	First imposition of tax.
	84-2310.	Tax receipt serves as license to do business.

84-2301. (2315.1) Definitions. The term “board” when used in this act shall mean the state board of equalization.

Any person, persons, co-partnership, joint stock company, association, or corporation (not being a railroad company or a lessee of a railroad company) wherever organized or incorporated, owning and operating, or operating any cars known as dining, buffet, chair, parlor, palace or sleeping cars, which are used upon railroads within this state, unless the ownership of such cars be identical with that of the lines of railroads on which they are operated, shall be deemed a sleeping car company for the purposes of this act.

History: En. Sec. 1, Ch. 64, L. 1923.

Taxation 142.

61 C.J. Taxation § 294.

84-2302. (2315.2) Reports. Every sleeping car company shall annually on or before the first day of March and in such forms and covering such period as the state board of equalization shall prescribe, make and file with it a statement verified by the oath of the person, agent or officer making the same, setting forth the facts called for. Such report shall contain:

- (1) The name of the company.
- (2) The nature of the company, whether a person, agent, trustee, lessee, receiver, or other person, or a joint stock company, partnership, association, or corporation.
- (3) The location of its principal office, and under the laws of what state or country organized, and when.
- (4) The name and address of the president, secretary, auditor, treasurer and superintendent or general manager.
- (5) The name and address of its chief officer or managing agent in Montana.
- (6) Its capital stock:
 - (a) The amount authorized.

- (b) The amount issued.
- (c) The amount of capital stock invested in its sleeping car business.
- (7) The number of shares of stock:
 - (a) Outstanding.
 - (b) Not issued.
 - (c) Treasury; and whether common or preferred.
- (8) The amount of the bonds outstanding; when issued; when due, and the rate of interest of each issue.
- (9) The par and market value of the stocks and bonds issued and outstanding.
- (10) The whole length and the names of railroad lines over which its cars were transported in the state of Montana.
- (11) The total car mileage and the car mileage within this state.
- (12) The gross and net earnings during the year.
- (13) Such other facts and information as such company or the state board of equalization may deem material upon the question of the true and full value of said property within this state. Said board shall furnish forms upon which to make such reports.

History: En. Sec. 2, Ch. 64, L. 1923.

Taxation—366 et seq.

61 C.J. Taxation § 820 et seq.

84-2303. (2315.3) Assessment. The state board of equalization shall carefully consider all reports made pursuant to section 84-2302 and all other facts and evidence collected and available, and shall fix the valuation of the property of sleeping car companies operating in the state for the purpose of levying and collecting license taxes thereon, as hereinafter provided.

History: En. Sec. 3, Ch. 64, L. 1923.

Taxation—376.

61 C.J. Taxation § 834.

84-2304. (2315.4) Method of determining valuation. (1) It shall find, ascertain, and determine the actual value in money of the entire amount of capital stock of each such company invested in its sleeping car business, and when the value of the capital stock cannot be reliably ascertained it shall find, ascertain and determine the value of the entire property used in said business. From the amount so obtained, it shall deduct the actual value of its real estate situate without this state not used in said business, and also the actual value of all its personal property, not used in said business. The remainder shall be taken and considered as the actual value of the capital stock of such company invested or used in its business.

(2) The board shall then divide the amount so obtained by the total car mileage on railroads over which the company did business to obtain the value per car mile, and shall then multiply the value per car mile thus obtained by the total number of car miles within this state. The result shall be taken and considered as the actual value of the property of such company subject to the license tax in this state, subject to review as provided in section 84-2305.

History: En. Sec. 4, Ch. 64, L. 1923.

84-2305. (2315.5) Notice of hearing concerning valuation—right to appear and be heard. The board shall thereupon give notice to the officer of

such company attesting its report of the time and place such company may appear and be heard in respect to such valuation to be made upon its property. After such hearing the said board may make such changes in its valuation as shall appear just and reasonable.

History: En. Sec. 5, Ch. 64, L. 1923.

84-2306. (2315.6) License tax—amount—levy—notice—payment. The board shall thereupon levy a license tax upon the property of such sleeping car company at the rate of one and one half per cent ($1\frac{1}{2}\%$) on the valuation thus found by it for the use of the state, and the board shall certify such assessment and levy to the state treasurer, who shall thereupon, by registered letter, notify the officer attesting the report of such company, of the amount of the assessment, the rate of levy and the amount of the tax; and such company shall have thirty days after the mailing of such notice within which to pay said tax to the state treasurer. And such tax when paid shall be turned into the general fund of the state treasury.

History: En. Sec. 6, Ch. 64, L. 1923.

33 Am. Jur. 365, Licenses, §§ 41 et seq.;
51 Am. Jur. 589, Taxation, § 86.

84-2307. (2315.7) Failure to report—nonpayment—action for collection. (1) If any sleeping car company shall fail to make the report required of it by this act, the board shall proceed upon the best information it may be able to obtain to fix the valuation against such company and shall notify it by letter of the action taken in that behalf. Thereupon the company so notified may appear and be heard as above provided.

(2) All taxes remaining unpaid after notice from the state treasurer, as above provided, shall draw interest at the rate of fifteen per centum per annum after they are due, and upon such failure to pay, the attorney general shall proceed by action in the name of the state against such company to collect the same, together with interest and the cost of the suit.

(3) Any such company claiming to be aggrieved by the levy of a license tax upon its property, may, within six months from the payment of the tax, and not thereafter, bring and maintain an action against the state in the district court of Lewis and Clark county to recover such part of the tax so paid as shall exceed the amount the company should have paid. The state may be served with the summons in such action by delivering a copy thereof to the attorney general or leaving it at his office in the capitol with one of his assistants.

(4) But no such company shall be permitted to contest the validity of any tax assessed and levied against it, unless at or before the time of serving its complaint or answer, as the case may be, it shall deposit with the state treasurer the amount of such tax, together with interest thereon at the rate of fifteen per cent per annum as above provided. In case the amount of the tax justly and equitably due from such company shall be finally determined to be less than the amount so paid, the excess shall be refunded to such company by direction of the court by the state treasurer.

History: En. Sec. 7, Ch. 64, L. 1923.

Taxation—372, 583 et seq.

61 C.J. Taxation §§ 832, 1377 et seq.

84-2308. (2315.8) Estoppel—excusing failure to file report. (1) If any company described in section 84-2301 or its officers or agents shall un-

reasonably refuse or neglect to make any report required by law or by the said board, or shall unreasonably refuse or neglect to answer any material question, or to permit an inspection of its records, books, accounts or papers when requested by said board, it shall be estopped to question or impeach the action or determination of the board, except upon satisfactory proof of fraud or mistake injurious to it.

(2) No such company shall be allowed in any action or proceeding to question the amount or valuation of its property and franchises as assessed by the board, unless it shall have made and filed with the board a full and complete report of the facts and information prescribed by law, and called for by the board; provided, that the refusal or neglect of such company to file its report in time may, on verified petition and for good cause shown, be excused by the board on condition that such company make a full and complete report disclosing all facts and information required of it within fifteen days after leave is given to file such report, and shall appear before the board and make full disclosure of all property liable to assessment and taxation under this act.

History: En. Sec. 8, Ch. 64, L. 1923.

Taxation 366 et seq.
61 C.J. Taxation § 820 et seq.

84-2309. (2315.9) First imposition of tax. The license tax shall be first imposed and paid for the whole calendar year 1923, and shall be based upon the reports as prescribed in section 84-2302 for the year 1922, and such report shall be made to the board by April first, 1923.

History: En. Sec. 9, Ch. 64, L. 1923.

Taxation 142.
61 C.J. Taxation § 294.

84-2310. (2315.10) Tax receipt serves as license to do business. The receipt by the state treasurer of the license tax paid in full shall serve as a license to the sleeping car company to conduct its business in the state of Montana during the year when issued.

History: En. Sec. 10, Ch. 64, L. 1923.

CHAPTER 24

LICENSE TAXES—STORE LICENSE

Section	84-2401.	Store license from board of equalization required.
	84-2402.	Application and fee for license.
	84-2403.	Board to consider application—issuance of license.
	84-2404.	Expiration and renewal of licenses.
	84-2405.	Retailers subject to act—license fees for.
	84-2406.	Annual license fees—who must procure license.
	84-2407.	Wholesale store licenses.
	84-2408.	Half year license rate.
	84-2409.	Act to whom applicable.
	84-2410.	"Store" defined.
	84-2411.	Penalty.
	84-2412.	Employment of help—disposal of license money.
	84-2413.	Repeal and saving clause.

84-2401. Store license from board of equalization required. That it shall be unlawful for any person, firm, corporation, association or co-partnership, either foreign or domestic, to open, establish, operate or maintain any store or stores in this state without first having obtained a license to do so from the state board of equalization, as hereinafter provided.

History: En. Sec. 1, Ch. 163, L. 1939.

NOTE.—The original store license tax law of Montana was Ch. 155, L. 1933, appearing as Secs. 2420.1-2420.11, R. C. M. 1935. This act was repealed and a new state license law enacted by Ch. 199, L. 1937 which was held void in *Vaughn & Ragsdale Co., Inc. v. State Board of Equalization*, 109 M 52, 96 P 2d 420, and was expressly repealed by Ch. 163, L. 1939.

Controlling Statute

Held, that ch. 199, L. 1937 (omitted), providing for the licensing of chain stores, and found invalid because carrying an enacting clause other than as prescribed by art. V, sec. 20 of the state constitution, was reenacted by ch. 163, L. 1939 (84-2401 to 84-2413) for the purpose of correcting the defective enacting clause, and this chapter is now the controlling statute on the subject. *Vaughn & Ragsdale Co., Inc. v. State Board of Equalization*, 109 M 52, 96 P 2d 420.

The taxes imposed by store license tax law, not being dependent upon any "regulatory provisions" or any "regulations applicable to those licensed", are applicable, as such, with regard to stores maintained in Glacier National Park. *State ex rel. State Board of Equalization v. Glacier Park Co.*, ___ M ___, 164 P 2d 306, 371.

Licenses—15(1).

37 C.J. Licenses § 77.

33 Am. Jur., Licenses, p. 333, § 9; p. 336, § 17; p. 359, § 34; p. 362, § 36; p. 369, § 47.

Enforceability of contract by unlicensed merchant. 30 ALR 873.

What amounts to a sale at retail within tax statutes or ordinances. 139 ALR 372.

Liability for mercantile license tax, as affected by governmental regulations or restrictions having adverse effect on business in which licensee is engaged. 143 ALR 586.

84-2402. Application and fee for license. Any person, firm, corporation, association, co-partnership or group desiring to open, establish, operate or maintain a store in the state of Montana shall apply to the state board of equalization for a license to do so. The application shall be made upon a form which shall be prescribed and furnished by the state board of equalization, and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the state board of equalization may require.

If the applicant desires to open, establish, operate or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open or establish each such store, but the respective stores for which the applicant desires to secure licenses may all be listed upon one (1) application blank.

Each such application shall be accompanied by a filing fee of fifty cents (50c) and by the license fee as prescribed in sections 84-2405 and 84-2406.

History: En. Sec. 2, Ch. 163, L. 1939.

Licenses—22.

37 C.J. Licenses § 98.

84-2403. Board to consider application—issuance of license. As soon as practicable after the receipt of any such application, the state board of equalization shall carefully examine such application to ascertain whether it is in proper form and contains the necessary and requisite information. If, upon examination, the state board of equalization shall find that such application is not in proper form and does not contain the necessary and requisite information, it shall return such application for correction.

If an application is found to be satisfactory, and if the filing and license fee, as herein prescribed, shall have been paid, the state board of equalization shall issue to the applicant a license for each store for which an application for a license shall have been made.

Each licensee shall display the license so issued in a conspicuous place in the store for which such license was issued.

History: En. Sec. 3, Ch. 163, L. 1939.

Operation and Effect

Fact that provision in store license tax law increasing license fee charged in accordance with number of stores operated

might have incidental regulatory effect tending to discourage operation of multiple stores would not make act a "regulatory" rather than a "revenue measure". State ex rel. State Board of Equalization v. Glacier Park Co., ___ M ___, 164 P 2d 366, 370.

84-2404. Expiration and renewal of licenses. All licenses shall be so issued so as to expire upon the thirty-first day of December of each calendar year. On or before the first day of January of each year, every firm, person, corporation, association, co-partnership having a license, shall apply to the state board of equalization for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state board of equalization.

No license shall lapse prior to the thirty-first day of January of the year next following the year for which the license was issued, and if, by such thirty-first day of January, an application for and a renewal license has not been made, the state board of equalization shall notify such delinquent license holder thereof, by registered mail, and if application is not made for a renewal license issued on or before the last day of February next ensuing, the former license shall lapse and become null and void.

Each such application for a renewal license shall be accompanied by a filing fee of fifty cents (50c) and by the license fee as prescribed in sections 84-2405 and 84-2406.

History: En. Sec. 4, Ch. 163, L. 1939.

Glacier Park Co., ___ M ___, 164 P 2d 366, 370.

References

State ex rel. Board of Equalization v.

Licenses 36.

37 C.J. Licenses § 66.

84-2405. Retailers subject to act—license fees for. Every person, firm, corporation, association, co-partnership or group opening, establishing, operating or maintaining one or more retail stores or mercantile establishments, within this state, under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association or consumer co-operative composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by such person, firm, corporation, association, or co-partnership or retailer under this act, but such units or members shall be taxed as individual units; and provided further, that the term "store" shall not mean or include for the purpose of computing the license fee prescribed in this section the following types of business, but that they shall be licensed under the prescribed fees in section 84-2406: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent. (75%) of the gross business is in petroleum products exclusively; or

lumber yards where seventy-five per cent. (75%) of the gross business is in building material and hardware exclusively; or grain elevators where seventy-five per cent. (75%) of the gross business is dealing in grains and seeds exclusively; and those businesses in which the sale of goods, wares, and merchandise is less than twenty-five per cent. (25%) of the gross business.

The license fee herein prescribed shall be paid annually, and shall be in addition to the filing fees prescribed in sections 84-2402 and 84-2404.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be five dollars (\$5.00).
2. Upon the second store, the annual license fee shall be fifty dollars (\$50.00).
3. Upon the third store, the annual license fee shall be one hundred dollars (\$100.00).
4. Upon the fourth store, the annual license fee shall be one hundred and fifty dollars (\$150.00).
5. Upon the fifth store, and on each store in excess of five stores, the annual license fee shall be two hundred dollars (\$200.00).

History: En. Sec. 5, Ch. 163, L. 1939.

What amounts to chain store, within license or taxing statute or ordinance. 122 ALR 692.

Licenses \S 15(1), 29.
37 C.J. Licenses \S 77, 116.

Constitutionality of chain store tax. 73 ALR 1481; 85 ALR 736 and 112 ALR 305.

84-2406. Annual license fees—who must procure license. Every person, firm, corporation, association, co-partnership or group opening, establishing, operating or maintaining one or more stores or mercantile establishments within this state under the same general management, supervision or ownership, where a stock of goods is maintained during any portion of the year, regardless of whether said stock is held by ownership, consignment, agency or any other means, who deal in petroleum products, building materials, and hardware and grain elevators, and those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent. (25%) of the gross business, subject to the following restrictions: Gasoline filling stations and/or gasoline distributing plants where seventy-five per cent. (75%) of the gross business is in petroleum products exclusively; those businesses in which the sale of goods, wares and merchandise is less than twenty-five per cent. (25%) of the gross business; lumber yards where seventy-five per cent. (75%) of the gross business is in building materials and hardware exclusively; grain elevators where seventy-five per cent. (75%) of the gross business is in grains and seeds exclusively, shall pay the annual license fee prescribed in this section for the privilege of opening, establishing, operating or maintaining such stores or mercantile establishments, but shall not be required to pay the license fees prescribed in section 84-2405.

The annual license fees herein prescribed shall be paid annually, and shall be in addition to the filing fees prescribed in sections 84-2402 and 84-2404.

The annual license fees herein prescribed shall be as follows:

1. Upon one store the annual license fee shall be five dollars (\$5.00).

2. Upon the second store, the annual license fee shall be seven dollars and fifty cents (\$7.50).

3. Upon the third store, the annual license fee shall be fifteen dollars (\$15.00).

4. Upon the fourth store, the annual license fee shall be twenty-two dollars and fifty cents (\$22.50).

5. Upon the fifth store, the annual license fee shall be thirty dollars (\$30.00).

6. Upon the sixth store, and each store in excess of six (6), the annual license fee shall be thirty-seven dollars and fifty cents (\$37.50).

History: En. Sec. 6, Ch. 163, L. 1939.

Licenses 15(1), 29.

37 C.J. Licenses §§ 77, 116.

84-2407. Wholesale store licenses. Wholesale stores shall be taxed in all cases as individual units at the rate of thirty-seven dollars and fifty cents (\$37.50) per unit, regardless of ownership; but, whenever goods, wares, and merchandise are sold regularly at both wholesale and retail from one establishment, the operator thereof shall pay the license fee required under section 84-2405 or 84-2406, as the case may be, for the conduct of a retail store, in addition to the wholesale license herein provided for.

History: En. Sec. 7, Ch. 163, L. 1939.

84-2408. Half year license rate. Each and every license issued prior to the first day of July of any year shall be charged for at the full rate, and each and every license on or after the first day of July of any year shall be charged for at one-half ($\frac{1}{2}$) of the full rate, as prescribed for in sections 84-2405, 84-2406 and 84-2407.

History: En. Sec. 8, Ch. 163, L. 1939.

84-2409. Act to whom applicable. The provisions of this act shall be construed to apply to every person, firm, corporation, co-partnership or group, either domestic or foreign, which is controlled or held in any degree with others by majority stock ownership or ultimately controlled or directed by one management or association of ultimate management.

History: En. Sec. 9, Ch. 163, L. 1939.

84-2410. "Store" defined. The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained or controlled by the same person, firm, corporation, association, co-partnership, or group, either domestic or foreign, in which goods, wares or merchandise of any kind are sold, either at retail or wholesale; and subject to the classification contained in sections 84-2405, 84-2406 and 84-2407.

History: En. Sec. 10, Ch. 163, L. 1939.

84-2411. Penalty. Any person, firm, corporation, association, co-partnership or group who shall violate any of the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined in any sum of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200.00), and each and every day that such violation shall continue shall constitute a separate and distinct offense.

History: En. Sec. 11, Ch. 163, L. 1939.

Operation and Effect

Failure of legislature to especially except penal provisions of store license tax law, for which it had no jurisdiction to enforce in Glacier National Park, from applying to Glacier National Park, did

not indicate legislative intent that other parts of the act should not apply to the national park. State ex rel. State Board of Equalization v. Glacier Park Co., ___ M ___, 164 P 2d 366, 370.

Licenses↔40.

37 C.J. Licenses §§ 151 et seq., 172.

84-2412. Employment of help—disposal of license money. The state board of equalization is hereby authorized to employ such clerical and field assistance as may be found necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act, less the expenses incurred in the administration of this act, shall be paid into the state treasury, to the credit of the general fund.

History: En. Sec. 12, Ch. 163, L. 1939.

Licenses↔30, 33.

37 C.J. Licenses §§ 117, 129.

84-2413. Repeal and saving clause. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that such repeal shall not affect any license tax imposed, any rights accrued, any penalty incurred or any action or proceeding commenced and not terminated, under and by virtue of any provision of any act or part of an act so repealed.

History: En. Sec. 14, Ch. 163, L. 1939.

CHAPTER 25

LICENSE TAXES—TELEGRAPH COMPANIES

Section 84-2501. Telegraph license tax—not to be set out on customers' bills—amount—time for payment.

84-2502. Statement of gross income—contents—payment to accompany.

84-2503. Rules and regulations for enforcement may be adopted by board.

84-2504. Penalty for delinquency.

84-2505. Records to be kept as required by board.

84-2506. Penalty for failure to file statement and for false statements.

84-2507. Board to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien.

84-2508. Books and records to be open to inspection by board.

84-2501. (2355.1) Telegraph license tax—not to be set out on customers' bills—amount—time for payment. That on and after the first day of January, 1934, there is hereby levied and shall be collected an annual tax of two per cent (2%) of the gross income derived from the intrastate business on the transmission of telegraph messages over telegraph lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account, or by reason of, the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively, March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 41, Ex. L. 1933;
amd. Sec. 1, Ch. 157, L. 1935.

Telegraphs and Telephones↔30.

62 C.J. Telegraphs and Telephones § 103.

33 Am. Jur. 321, Licenses, generally.

84-2502. (2355.2) Statement of gross income—contents—payment to accompany. Each and every person, association or corporation engaged in carrying on such business in this state, shall, within thirty (30) days after

the end of each quarter, beginning with the quarter ending March 31, 1934, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from business within this state including the transmission of telegraph messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telegraph messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within, this state and from those originating within, but terminating outside of, this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in amount equal to two per cent (2%) of such gross income.

History: En. Sec. 2, Ch. 41, Ex. L. 1933;
amd. Sec. 2, Ch. 157, L. 1935.

84-2503. (2355.3) Rules and regulations for enforcement may be adopted by board. The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 41, Ex. L. 1933.

84-2504. (2355.4) Penalty for delinquency. Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

History: En. Sec. 4, Ch. 41, Ex. L. 1933.

84-2505. (2355.5) Records to be kept as required by board. Each person, association or corporation shall keep a record in such form as the state board of equalization shall require showing the total gross receipts, as herein described, and such other information as the state board of equalization may require.

History: En. Sec. 5, Ch. 41, Ex. L. 1933.

84-2506. (2355.6) Penalty for failure to file statement and for false statements. Each person, association or corporation, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of operating a telegraph business, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars (\$1,000.00), or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 6, Ch. 41, Ex. L. 1933.

84-2507. (2355.7) Board to determine tax in case no statement filed—penalty and interest—collection of tax—perfection and enforcement of tax lien. (1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for nonpayment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state board of equalization, of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as other liens are enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof.

(3) When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid license taxes, penalty and interest.

History: En. Sec. 7, Ch. 41, Ex. L. 1933.

84-2508. (2355.8) Books and records to be open to inspection by board. The books and records of every person, association or corporation shall be

open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 41, Ex. L. 1933.

CHAPTER 26

LICENSE TAXES—TELEPHONE COMPANIES

- Section 84-2601. Annual tax levied on gross income of telephone business.
 84-2602. Statement and payment on gross income—certain business excluded.
 84-2603. Board to adopt rules.
 84-2604. Penalty on delinquent tax.
 84-2605. Taxpayer to keep records.
 84-2606. Penalties.
 84-2607. Board to levy tax on failure of taxpayer to make statement.
 84-2608. Books of taxpayer open to inspection.

84-2601. Annual tax levied on gross income of telephone business. That on and after the first day of April, 1947, there is hereby levied and shall be collected an annual tax of one and one-fourth per cent ($1\frac{1}{4}\%$) of the gross income, in excess of Two Hundred Fifty Dollars (\$250.00) quarterly, derived from any telephone business within this state including the transmission of telephone messages in this state, over telephone lines in this state owned by any person, association or corporation; provided, however, that no bill, statement or account rendered or given any customer shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act. Such annual license tax shall be paid in quarterly installments for the quarters ending respectively March 31, June 30, September 30, and December 31, in each year.

History: En. Sec. 1, Ch. 94, L. 1937; Telegraphs and Telephones § 30.
 amd. Sec. 1, Ch. 41, L. 1947. 62 C.J. Telephones and Telegraphs § 103.

84-2602. Statement and payment on gross income—certain business excluded. Each and every person, association or corporation liable to tax under this act engaged in carrying on such telephone business in this state shall, within sixty (60) days after the end of each quarter, beginning with the quarter ending June 30, 1937, make out in duplicate and file with the state board of equalization, under oath, a statement in such form as the state board of equalization may require and prescribe, showing the total gross income of such person, association or corporation derived from the telephone business within this state including the transmission of telephone messages originating and terminating within this state, but excluding therefrom the gross income derived from the transmission of telephone messages passing through this state but both originating and terminating outside of this state and from those originating outside of, but terminating within this state and from those originating within but terminating outside of this state during the preceding quarter, and containing such other information as the state board of equalization may require; and shall accompany such statement with the payment to the state board of equalization of a license tax in amount equal to ($1\frac{1}{4}\%$) of such gross income.

History: En. Sec. 2, Ch. 94, L. 1937.

84-2603. Board to adopt rules. The state board of equalization shall have the power, and it shall be its duty from time to time to adopt, publish and enforce such rules and regulations not inconsistent herewith as it may deem requisite for the purpose of carrying out the provisions of this act.

History: En. Sec. 3, Ch. 94, L. 1937.

84-2604. Penalty on delinquent tax. Any such license tax not paid within the time herein provided for shall be delinquent and a penalty of ten per cent (10%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid.

History: En. Sec. 4, Ch. 94, L. 1937.

84-2605. Taxpayer to keep records. Each person, association or corporation liable to tax under this act shall keep a record in such form as the state board of equalization shall require showing the total gross receipts, as herein described, and such other information as the state board of equalization may require.

History: En. Sec. 5, Ch. 94, L. 1937.

84-2606. Penalties. Each person, association or corporation, who fails, neglects, or refuses to make and file the statements required by this act in the manner or within the time herein provided, or who shall make any false statement with reference to his said business of operating a telephone business, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in any amount not exceeding one thousand dollars (\$1,000.00), or imprisonment in the county jail for not to exceed six (6) months, or shall be punished by the imposition of both such fine and imprisonment.

History: En. Sec. 6, Ch. 94, L. 1937.

84-2607. Board to levy tax on failure of taxpayer to make statement.

(1) If any person, association or corporation subject to the payment of such license tax shall fail, neglect or refuse to make any statement required by this act, or shall fail to make payment of such license tax within the time herein provided, the state board of equalization shall, immediately after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such statement and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of the license tax due the state from such delinquent person, association or corporation, and shall add thereto a penalty of five per cent (5%) thereof for the first failure, neglect or refusal; ten per cent (10%) for the second; fifteen per cent (15%) for the third; and twenty-five per cent (25%) for the fourth, and each subsequent failure, neglect and refusal, which shall be in addition to the ten per cent (10%) penalty hereinbefore provided for non-payment of such license tax within the time herein provided. Said license tax and the penalties added thereto shall bear interest at the rate of one per cent (1%) per month from the date such statements should have been made and said license tax paid. The state treasurer of the state of Montana shall then proceed to collect such license tax with penalties and interest. Upon the

request of the state treasurer it shall be the duty of the attorney general to commence and prosecute to final determination, in any court of competent jurisdiction, an action to collect such license tax.

(2) All license taxes due from any person, association or corporation under the provisions of this act, together with all penalties and interest thereon, shall be a lien upon any and all property of such person, association or corporation upon the filing by the state board of equalization, of a duplicate copy of the statement so made by the state board of equalization, or a certified copy of any statement filed with said board in the office of the county clerk of the county where such property is situated, which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced by law. No action shall be maintained to enjoin the collection of such license tax or any part thereof. When the amount due the state is paid in full and before the entry of foreclosure decree, the state treasurer shall release the said lien by filing, in the office of the county clerk wherein is filed the said lien, a written release thereof. At any time prior to the payment of said taxes, penalty and interest, before the entry of foreclosure decree, the state treasurer may release from the operation of said lien a part of said property to enable the person, association or corporation to mortgage, sell or otherwise dispose of the same in order to procure funds with which to pay said license taxes, penalty and interest, provided there remains, in the judgment of the state treasurer, sufficient property subject to said lien to insure the payment of the whole of said unpaid license taxes, penalty and interest.

History: En. Sec. 7, Ch. 94, L. 1937.

84-2608. Books of taxpayer open to inspection. The books and records of every person, association or corporation shall be open and subject to inspection by the state board of equalization or any of its employees or assistants during business hours so far as may be necessary to ascertain the amount of license tax due.

History: En. Sec. 8, Ch. 94, L. 1937.

CHAPTER 27

LICENSES—GENERAL PROVISIONS CONCERNING COUNTY LICENSES

- Section 84-2701. County clerk shall prepare, print and furnish licenses to the county treasurer.
- 84-2702. When license to be procured.
- 84-2703. Prosecution of persons failing to take out license.
- 84-2704. County treasurer—inquiry as to persons liable to procure licenses.
- 84-2705. Proof on trial.
- 84-2706. Settlements, when made.
- 84-2707. Lien of license.
- 84-2708. Disposal of license moneys.

84-2701. (2410) County clerk shall prepare, print and furnish licenses to the county treasurer. The county clerk shall prepare and have printed such blank licenses as may be required and after affixing his official seal thereto, he shall deliver same to the county treasurer. At the time of such delivery, he shall charge the county treasurer therewith by appropriate entry in his records showing the amount, numbers and classes of licenses so

furnished. As licenses are issued and accounted for by the county treasurer, the county clerk shall credit such account with all licenses so issued and accounted for, so that the account will at all times show the number of licenses furnished the treasurer, their numbers, the number issued or cancelled and the number remaining in the hands of the county treasurer.

History: En. Sec. 4040, Pol. C. 1895; re-en. Sec. 2746, Rev. C. 1907; amd. Sec. 1, Ch. 34, L. 1909; re-en. Sec. 2410, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1933. Cal. Pol. C. Sec. 3356.

References

Cited or applied as section 2746, revised codes, in State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

Licenses ⇨ 23.

37 C.J. Licenses § 99.

84-2702. (2413) When license to be procured. A license must be procured immediately before the commencement of any business or occupation liable to a license tax from the county treasurer of the county where the applicant desires to transact the same, which license authorizes the party obtaining the same in his town, city, or particular locality in the county to transact the business described in such license; separate licenses must be obtained for each branch establishment or separate house of business located in the same county. No license issued under this chapter authorizes any person to carry on any business within the limits of any incorporated city or town having power by its charter to impose or levy city or town license taxes, unless such person, in addition to the license provided by this chapter, also procures the license required by the ordinance or orders of such city or town.

History: En. Sec. 4043, Pol. C. 1895; re-en. Sec. 2749, Rev. C. 1907; re-en. Sec. 2413, R. C. M. 1921. Cal. Pol. C. Sec. 3359.

Operation and Effect

This section requires that a license shall be obtained as a condition precedent to the right to do business. State v. Northern Pac. Ex. Co., 27 M 419, 421, 71 P 404.

References

Cited or applied as section 2749, revised codes, in State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

Licenses ⇨ 36, 39.

37 C.J. Licenses §§ 66, 137 et seq., 171.

84-2703. (2414) Prosecution of persons failing to take out license. Against any person required to take out a license who fails, neglects, or refuses to take out such license, or who carries on or attempts to carry on business without such license, the county treasurer must direct suit, in the name of the state of Montana as plaintiff, to be brought for the recovery of the license tax; and in such case either the treasurer or the county attorney must make the necessary affidavit for the writ of attachment, and such writ of attachment may issue without any bonds being given on behalf of the plaintiff; and in case of a recovery by the plaintiff, fifteen dollars damages must be added to the judgment and costs to be collected from the defendant. It shall be the duty of the board of county commissioners or the state examiner, when examining the treasurer's report, to investigate if any persons are doing business in the county without a license, or if the amount of the license is sufficient. In either event the treasurer shall be officially notified, and thereafter shall be personally liable for such license or increase unless he promptly proceeds under this section or under section 84-2707 to collect the same.

History: Ap. p. Sec. 4044, Pol. C. 1895; amd. Sec. 1, Ch. 92, L. 1903; amd. Sec. 1, Ch. 122, L. 1907; re-en. Sec. 2750, Rev. C. 1907; re-en. Sec. 2414, R. C. M. 1921. Cal. Pol. C. Sec. 3360.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

Operation and Effect

The words "any person required to take out a license" mean any person engaged in a profession, trade, or occupation for

which a license tax is required and a person engaged in any such business, upon the payment of the required fee, can demand a license as a matter of right. In the enactment of the section, the legislature intended nothing more than to provide means for the collection of a license fee from one entitled to a license as a matter of right upon payment of the fee. State ex rel. Carter v. Kall, 53 M 162, 166, 162 P 385.

Licenses—32(2).

37 C.J. Licenses § 128.

84-2704. (2415) County treasurer— inquiry as to persons liable to procure licenses. The county treasurer must make diligent inquiry as to all persons in his county liable to pay license as provided in this chapter, and must require, where the rate of license is divided into classes, each person to state, under oath or affirmation, the probable amount of business which he or the firm of which he is a member, or for which he is an agent or attorney, or the association or corporation of which he is the president, secretary, or managing agent, will do in the next succeeding three months; and thereupon such person, agent, president, secretary or other officer must procure a license from the county treasurer for the term desired, and the class for which such party is liable to pay; and in all cases where an underestimate has been made by the party applying, the party making such underestimate, or the company he represented, is required to pay for a license for the next quarter double the sum otherwise required.

History: En. Sec. 4045, Pol. C. 1895; re-en. Sec. 2751, Rev. C. 1907; re-en. Sec. 2415, R. C. M. 1921. Cal. Pol. C. Sec. 3361.

Licenses—22.

37 C.J. Licenses § 98.

84-2705. (2416) Proof on trial. Upon the trial of any action authorized by this chapter, the defendant is deemed not to have procured the proper license unless he either produces it or proves that he did procure it; but he may plead in bar of the action a recovery against him and the payment by him in a civil action of the proper license tax, together with damages and costs.

History: En. Sec. 4046, Pol. C. 1895; re-en. Sec. 2752, Rev. C. 1907; re-en. Sec. 2416, R. C. M. 1921. Cal. Pol. C. Sec. 3362.

codes, in State ex rel. Carter v. Kall, 53 M 162, 165, 162 P 385.

References

Cited or applied as section 2752, revised

Licenses—32(2).

37 C.J. Licenses § 122 et seq.

84-2706. (2417) Settlements, when made. On the first Monday in each month the county treasurer must return to the county clerk all licenses unsold, and show that he has paid into the county treasury all moneys collected for licenses sold during the preceding month.

History: En. Sec. 4047, Pol. C. 1895; re-en. Sec. 2753, Rev. C. 1907; re-en. Sec. 2417, R. C. M. 1921. Cal. Pol. C. Sec. 3363.

Licenses—21.

37 C.J. Licenses § 96 et seq.

84-2707. (2419) Lien of license. All property held or used in any trade, occupation, or profession, for which a license is required by the provisions of this chapter, is liable for such license and subject to a lien for the

amount thereof, which lien has precedence of any other lien, claim, or other demand; and if any person fails or refuses to procure a license before the transaction of the business specified, the county treasurer must seize such property, or any other property belonging to such person, and sell the same in the manner provided in sections 84-4204 to 84-4208.

History: En. Sec. 4049, Pol. C. 1895; re-en. Sec. 2755, Rev. C. 1907; re-en. Sec. 2419, R. C. M. 1921.

Operation and Effect

Property which is held or used in any trade, occupation, or profession for which a license is required, is liable for license, and the lien for the amount of license has precedence over any mortgage upon the same. *Burfiend v. Hamilton*, 20 M 343, 346, 51 P 161.

Validity of Similar Section

As to the validity of a statute similar

to the above section, which authorized the summary seizure and sale of property belonging to another, but in use by a person from whom a license was due, and creating a lien thereon, see *Chauvin v. Valiton*, 8 M 451, 457, 20 P 658.

References

Cited as section 2755, revised codes, in State ex rel. *Carter v. Kall*, 53 M 162, 165, 162 P 385.

Licenses—31.

37 C.J. Licenses § 118.

33 Am. Jur. 391, Licenses, § 79.

84-2708. (2420) Disposal of license moneys. All moneys collected for licenses must be paid into the treasury of the county in which the same are collected. The county treasurer shall retain fifty per cent. thereof for the use of the county, he shall pay over forty-five per cent. thereof to the state treasurer for the use of the general fund of the state and he shall pay over five per cent. thereof to the state treasurer for the use of the state bounty fund.

History: En. Sec. 1, Ch. 76, L. 1905; re-en. Sec. 2756, Rev. C. 1907; amd. Sec. 1, Ch. 54, L. 1921; re-en. Sec. 2420, R. C. M. 1921.

Licenses—33.

37 C.J. Licenses § 129.

CHAPTER 28

LICENSES—GIVING BONUSES FOR SALE OF MERCHANDISE

Section 84-2801. License required for furnishing premiums or bonuses for sale of merchandise.

84-2802. Issuance of license and fee for same.

84-2803. Contents of license.

84-2804. Penalty for violation of law.

84-2801. (2430) License required for furnishing premiums or bonuses for sale of merchandise. Every person, firm, or corporation who shall use, and every person, firm, or corporation who shall furnish to any other person, firm, or corporation to use, as a gift or bonus, or otherwise, in, with, or for the sale of any goods, wares, or merchandise, any premium or bonus, including stamps, coupons, tickets, certificates, cards, or other similar devices which shall entitle the purchaser receiving the same with such sale of goods, wares, or merchandise to procure from any person, firm, or corporation, any premium or bonus, including goods, wares, or merchandise free of charge or for less than the retail market price thereof upon the production of any number of said stamps, coupons, tickets, certificates, cards, or other similar device; and every person, firm, or corporation placing premiums or bonuses of goods, wares, or merchandise, including such as crockery, chinaware, aluminumware, tinware, granite-

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SL 49, C. 56
Sec. 1, P. 126

ware, or anything else that may be included or contained or delivered with packages of any kind of merchandise of any description, shall, before so furnishing, selling, or using the same, obtain a separate license therefor from the county treasurer of each county wherein such furnishing or selling or using of such premiums or bonuses shall take place, for each and every store or place of business in that county from which such furnishing or selling of premiums or bonuses as herein enumerated, or in which such shall take place.

History: En. Sec. 1, Ch. 17, L. 1917;
re-en. Sec. 2430, R. C. M. 1921.

NOTE.—This and the three following sections were repealed by Ch. 56, L. 1949.

Trading Stamps

The use of trading stamps which are

redeemable in cash only is not prohibited. State v. Lutey Bros., 55 M 545, 179 P 457; see, also, Lutey Bros. v. Jackson, 55 M 556, 557, 179 P 459.

Licenses⇒15(7).

37 C.J. Licenses §§ 77, 78.

84-2802. (2431) Issuance of license and fee for same. In order to obtain such license, the person, firm, or corporation applying therefore shall pay to the county treasurer of the county for which such license is sought the sum of six thousand dollars, and upon such payment being made, the county treasurer shall issue to such person, firm, or corporation so paying, a license to, for the period of one year, give or furnish or include in or with sales of goods, wares, or merchandise, premiums or bonuses, or other similar devices, as described in the preceding section, or to pack such premiums or bonuses in or deliver same in connection with packages of merchandise, as premiums or bonuses.

History: En. Sec. 2, Ch. 17, L. 1917;
re-en. Sec. 2431, R. C. M. 1921.

Licenses⇒22, 29.

37 C.J. Licenses §§ 98-116.

84-2803. (2432) Contents of license. Such license shall contain the name of the grantee thereof, the date of its issuance and expiration, and name of the town or city or place in which the same shall be used, and shall only operate to license retail sales made in such town, city, or place.

History: En. Sec. 3, Ch. 17, L. 1917;
re-en. Sec. 2432, R. C. M. 1921.

Licenses⇒23.

37 C.J. Licenses § 99.

84-2804. (2433) Penalty for violation of law. Any person, firm, or corporation violating any of the provisions of this act shall, for each single offense, be deemed guilty of a misdemeanor, and punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or by imprisonment in the county jail not to exceed sixty days, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 17, L. 1917;
re-en. Sec. 2433, R. C. M. 1921.

Licenses⇒40.

37 C.J. Licenses §§ 151 et seq., 172.

CHAPTER 29

LICENSES—HUCKSTERS

- Section 84-2901. "Huckster" defined.
84-2902. Amount of license.
84-2903. Application for license.
84-2904. Issuance of license—filing of application—endorsement.
84-2905. Penalty for failure to exhibit license.
84-2906. Punishment for doing business without license.
84-2907. Interpretation of provisions of law.

84-2901. (2429.9) **"Huckster" defined.** Any person engaged or employed in the business of buying and selling farm products who disposes of such products by selling them at retail to consumers by going from house to house, is within the meaning of this act, a huckster.

History: En. Sec. 1, Ch. 183, L. 1925.

Hawkers and Peddlers⇒3(2).

39 C.J.S. Hawkerc and Peddlers § 1 et seq.

40 Am. Jur. 938, Peddlers, Transient Dealers and Solicitors, §§ 30 et seq.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

84-2902. (2429.10) **Amount of license.** Every huckster desiring to do business in any county of this state, must, before commencing such business, pay to the county treasurer of such county, the sum of fifteen dollars (\$15.00) for a license to conduct such business for a period of six months from the date such license is issued.

History: En. Sec. 2, Ch. 183, L. 1925;
amd. Sec. 1, Ch. 124, L. 1937.

Licenses⇒29.

37 C.J. Licenses § 116.

84-2903. (2429.11) **Application for license.** Every huckster desiring to do business in any county of this state, must before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer an application in writing, which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. Whether acting as principal, agent or employee.
4. If acting as agent or employee, the name and place of business of his principal or employer.

At the time of filing the application, such huckster must accompany the application above provided with the sum specified in the preceding section as a license fee.

History: En. Sec. 3, Ch. 183, L. 1925.

Hawkers and Peddlers⇒4.

39 C.J.S. Hawkerc and Peddlers § 7.

Cross-Reference

Cities may license peddlers, sec. 11-918.

84-2904. (2429.12) **Issuance of license—filing of application—endorsement.** Upon filing of the application specified in section 84-2903 and upon the payment to the county treasurer of the sum specified in section 84-2902, the county treasurer shall issue and deliver to the applicant, a license to carry on the business of a huckster for a period of six months from the date of such license. Such license shall be nontransferable and shall have printed across the face thereof in bold type the words "not transferable."

The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of the applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 4, Ch. 183, L. 1925.

84-2905. (2429.13) **Penalty for failure to exhibit license.** Every such huckster doing business under the provisions of this act must upon demand

of any interested person exhibit his license and permit the same to then and there be read by the person making such demand; and any such huckster who shall refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00).

History: En. Sec. 5, Ch. 183, L. 1925. 39 C.J.S. Hawkers and Peddlers §§ 10, 11.
Hawkers and Peddlers 6, 7.

84-2906. (2429.14) Punishment for doing business without license. Every huckster as herein defined, doing business without first obtaining a license as required by this act, is guilty of a misdemeanor, and shall be punished accordingly, as provided in Title 94.

History: En. Sec. 6, Ch. 183, L. 1925. **Cross-Reference**
Carrying on business without a license, penalty, sec. 94-1511.

84-2907. (2429.15) Interpretation of provisions of law. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act. Nothing in this act shall be construed so as in any manner to impair, abridge or interfere with, the right of a grower or producer of farm products to dispose of such products grown or produced by him.

History: En. Sec. 7, Ch. 183, L. 1925. Hawkers and Peddlers 1.
39 C.J.S. Hawkers and Peddlers § 6.

CHAPTER 30

LICENSES—ITINERANT MERCHANTS

Section	84-3001.	"Itinerant merchant" defined.
	84-3002.	"Established place of business" defined.
	84-3003.	Persons not included.
	84-3004.	Who shall be exempt—affidavit.
	84-3005.	Itinerant merchant license required.
	84-3006.	Application for license—fee.
	84-3007.	Surety bond.
	84-3008.	License, issuance, form and display of.
	84-3009.	License nontransferable.
	84-3010.	Revocation of license.
	84-3011.	Administrative rules.
	84-3012.	Offending vehicle to be kept in custody.
	84-3013.	Disposition of license fees.
	84-3014.	Construction of act.
	84-3015.	Penalty.

84-3001. "Itinerant merchant" defined. For the purpose of this act, "itinerant merchant" shall mean any person who buys, or offers to buy, or sells, or offers to sell, in this state, at wholesale or retail any produce as defined by section 84-3403, who does not hold a license under the provisions of chapter 34 of this Title, and transports the same in this state by use of a motor vehicle, or by any other method of transportation, except as herein otherwise provided, or who has not secured the permit of exemption herein provided.

History: En. Sec. 1, Ch. 214, L. 1939.
 Licenses 16(2).

37 C.J. Licenses § 80.
 40 Am. Jur. 938, Peddlers, Transient
 Dealers, and Solicitors, §§ 30 et seq.

84-3002. "Established place of business" defined. "Established place of business", for the purpose of this act, shall mean any permanent warehouse, building, or structure, at which a permanent business is carried on as such in good faith and not for the purpose of evading this act, and at which stocks of the property being transported are produced, stored or kept in quantities reasonably adequate for, and usually carried for, the requirements of such business, and which is recognized, licensed and taxed as a permanent business at such place, and shall not mean residences, tents, temporary stands or other temporary quarters, any railway car, nor permanent quarters occupied pursuant to any temporary arrangement.

History: En. Sec. 2, Ch. 214, L. 1939.

84-3003. Persons not included. The term "itinerant merchant" shall not mean or include the following:

(1) A person using a motor vehicle owned by him, whether operated by him or his agent, for the transportation of produce produced by him on owned or leased premises, when the entire course of such transportation extends not more than one hundred fifty (150) miles from his residence, whether such residence be within or without this state.

(2) Any person handling produce grown by him as herein provided who shall have secured from the commissioner of agriculture, labor and industry before offering any such produce for sale, a permit of exemption. Such permit shall be issued by the commissioner of agriculture upon application and payment of a fee of one dollar (\$1.00), provided the applicant shall, in the discretion of the commissioner of agriculture, be able to satisfactorily show that he will sell, or offer for sale, only produce of his own production; and when and if issued shall permit the sale of only such produce, and shall be forfeited at any time the holder of such permit of exemption shall sell, or offer to sell any produce not of his own production.

(3) A person transporting property owned by him in a motor vehicle owned by him, whether operated by him or his agent, when such transportation is incident to a business conducted by him at an established place of business operated by him, either within or without this state, and when said property is being transported to or from an established place of business, operated by him in this state.

(4) A person transporting property for his own consumption or use and not for sale.

History: En. Sec. 3, Ch. 214, L. 1939.

84-3004. Who shall be exempt—affidavit. No person shall be exempt from the requirements of this act unless he or the driver of the motor vehicle upon which his property is being transported, shall, upon the request of any peace officer or any person charged with the enforcement of this act, including all employees of the department of agriculture, labor and industry, execute an affidavit containing such facts as the commissioner of agriculture may, in his discretion, require, and deliver the same to said peace officer or such employee. Such affidavit must clearly show that the

person claiming the exemption is entitled to one or more of the exemptions provided in this act.

History: En. Sec. 4, Ch. 214, L. 1939.

84-3005. Itinerant merchant license required. No person shall engage in business as an itinerant merchant, as defined by this act, without obtaining from the commissioner of agriculture the license herein required.

History: En. Sec. 5, Ch. 214, L. 1939.

84-3006. Application for license—fee. An application for a license to engage in business as an itinerant merchant shall be made to the commissioner of the department of agriculture, labor and industry upon forms to be prepared by him.

A separate application and license shall be required for each motor vehicle to be operated. Such application shall contain such facts as the commissioner of agriculture shall require. The fee for each license shall be one hundred dollars (\$100.00) for the calendar year in which it is issued, and each license shall expire at the end of the calendar year in which issued. The proper fee shall accompany the application. The application shall be signed and sworn to by the applicant.

History: En. Sec. 6, Ch. 214, L. 1939.

84-3007. Surety bond. No license shall be issued until the applicant shall have filed with each application, and the same has been approved by the commissioner of agriculture, a surety bond issued by a company authorized to do business in the state in the penal sum of not less than one thousand dollars (\$1,000), in such form as may be prescribed by the commissioner of agriculture conditioned upon the delivery of honest weights, measures, or grades, accurate representation as to quality or class of produce, the actual payment of checks, drafts or other obligations delivered by the itinerant merchant in exchange for the purchase of such produce, and the payment of all obligations incurred by him for the purchase of the same.

History: En. Sec. 7, Ch. 214, L. 1939.

84-3008. License, issuance, form and display of. Upon the approval of the application and bond and upon compliance with the terms of this act, the commissioner of agriculture, labor and industry shall issue to the applicant a license as an itinerant merchant in such form as the commissioner of agriculture may prescribe. Such license shall at all times be carried by the driver of the motor vehicle described and shall at all times be subject to inspection by any person.

History: En. Sec. 8, Ch. 214, L. 1939.

84-3009. License nontransferable. No license issued pursuant to this act may be sold or transferred, and no license may be transferred from one vehicle to another, without the written consent of the commissioner of agriculture.

History: En. Sec. 9, Ch. 214, L. 1939.

84-3010. Revocation of license. Upon such notice and hearing as the commissioner of agriculture may deem proper, he may revoke any license

84-3006
Comm'r
refers to
Comm'r
of Ag.
L. '51, c. 177
Sec. 6, p. 364

84-3008
Comm'r
refers to
Comm'r
of Ag.
L. '51, c. 177
Sec. 6, p. 364

issued under the provisions of this act for failure to comply with any of the laws of this state.

History: En. Sec. 10, Ch. 214, L. 1939.

84-3011. Administrative rules. The commissioner of agriculture, labor and industry shall make and enforce such rules for the administration of this act as he may deem necessary and proper.

History: En. Sec. 11, Ch. 214, L. 1939.

84-3011
Comm'r
refers to
Comm'r
of Ag.
L. '51, c. 177
Sec. 6, p. 364

84-3012. Offending vehicle to be kept in custody. Any motor vehicle operated in violation of this act shall be kept in the custody of any person authorized to enforce any of the laws of this state, or in the custody of any person authorized to enforce this act including all employees of the department of agriculture, labor and industry, and shall not be operated except under his or their authority and solely for the purpose of taking it to the nearest convenient place of custody, until the provisions of this act have been complied with.

History: En. Sec. 12, Ch. 214, L. 1939.

84-3013. Disposition of license fees. All sums received from license fees under this act by the commissioner of agriculture, shall be by him deposited with the state treasurer, and shall be used to defray the cost of administration and enforcement of this act.

History: En. Sec. 13, Ch. 214, L. 1939.

84-3014. Construction of act. Nothing in this act shall be construed to repeal or amend any statute delegating authority to any county or municipal corporation to license, tax, or regulate peddlers or itinerant merchants. This act shall not be construed as repealing or amending any of the provisions of chapter 34 of this Title.

History: En. Sec. 14, Ch. 214, L. 1939.

84-3015. Penalty. Any person violating any provision of this act shall be guilty of a misdemeanor, and shall upon conviction thereof, be punished by a fine of not less than twenty-five dollars (\$25.00) and not more than two hundred dollars (\$200.00).

History: En. Sec. 15, Ch. 214, L. 1939.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

CHAPTER 31

LICENSES—ITINERANT VENDORS

Section	84-3101.	License of itinerant vendor of drugs, etc.
	84-3102.	Definition of terms.
	84-3103.	Amount of license.
	84-3104.	Application for license.
	84-3105.	Bond required if deposit taken on orders for future delivery.
	84-3106.	Issuance of license—filing of application—endorsement.
	84-3107.	Penalty for failure to exhibit license.
	84-3108.	Punishment for doing business without license.
	84-3109.	Interpretation of provisions of law.

84-3101. (2429) License of itinerant vendor of drugs, etc. Any itinerant vendor of any drug, poison, ointment, or appliance of any kind intended

for treatment of any disease or injury, who shall, by writing or printing, or any other method, publicly profess to cure or treat disease or injury, or deformity, by any drug, nostrum, or manipulation or other expedient, shall pay a license of fifty dollars per annum in each county in which he may offer to do business, or according to the usual laws in force for that purpose.

History: En. Sec. 655, Pol. C. 1895; re-en. Sec. 1637, Rev. C. 1907; re-en. Sec. 2429, R. C. M. 1921.

Cross-Reference

Cities may license peddlers, sec. 11-918.

Licenses⇒15(2), 29.

37 C.J. Licenses §§ 80, 116.

40 Am. Jur. 938, Peddlers, Transient Dealers and Solicitors, §§ 30 et seq.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

84-3102. (2429.16) Definition of terms. Any person engaged or employed in the business of retailing to consumers by going from consumer to consumer, either on the streets or to their places of residence or employment, and there soliciting, selling, or offering to sell, or exhibiting for sale, by sample, by catalogue, or otherwise, or taking orders for future delivery of any goods, wares or merchandise, or for services to be performed in the future, is within the meaning of this act, an "itinerant vendor"; a "consumer" is "one who uses, and by using, destroys the value of the article purchased." This act shall in no way affect any person, firm, co-partnership or corporation with a commercial rating and who maintain a permanent place of business in the state of Montana.

History: En. Sec. 1, Ch. 184, L. 1925.

NOTE.—Sections 84-3102 to 84-3109 (2429.16 to 2429.23) held unconstitutional as violating section 8, article I of the United States Constitution insofar as they attempt to impose a license for persons selling or seeking to sell the goods of a

nonresident of Montana prior to the introduction of such goods in the state. Opinions of Attorney General Vol. 11, p. 141.

Licenses⇒15(2).

37 C.J. Licenses § 80.

84-3103. (2429.17) Amount of license. For the purpose of defraying the expenses of regulation under this act, every itinerant vendor desiring to do business in any county of this state must, before commencing such business, pay to the county treasurer of such county the sum of fifteen (\$15.00) dollars for a license to conduct such business for a period of one (1) year from the date such license is issued.

History: En. Sec. 2, Ch. 184, L. 1925; amd. Sec. 1, Ch. 109, L. 1937.

40 Am. Jur. 938, Peddlers, Transient Dealers, and Solicitors, §§ 30 et seq.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

Licenses⇒29.

37 C.J. Licenses § 116.

84-3104. (2429.18) Application for license. Every itinerant vendor desiring to do business in any county of this state, must before commencing such business file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing subscribed and sworn to by such applicant before an officer in this state authorized to take oaths, which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. His local headquarters, if any.
4. Time of his arrival in the county.

5. County from which last license, if any, received.
6. Whether acting as principal, agent or employee.
7. If acting as agent or employee, the name and place of business of his principal or employer.
8. If an agent, as part of application, principal's acknowledgment of such agency must accompany application.
9. Brief descriptive list of articles to be offered for sale, or service to be performed.
10. Whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.

At the time of filing the application, such itinerant vendor must accompany the application above provided with the sum specified in the preceding section as a license fee.

History: En. Sec. 3, Ch. 184, L. 1925. Licenses 22.
37 C.J. Licenses § 98.

84-3105. (2429.19) Bond required if deposit taken on orders for future delivery. Every application made by an itinerant vendor taking orders for future delivery and collecting advance payments, deposits or guarantees thereon, under the terms of the preceding sections, shall be accompanied by a bond in the penal sum of \$250.00 to said county treasurer, executed by a surety company licensed to do business in this state, or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county (or in lieu thereof a cash bond of equal amount) and to be approved by said county treasurer, conditioned upon making of final delivery of the goods ordered or the services to be rendered, in accordance with the terms of such order, or failing therein, that the monies advanced by his customers be refunded. Any person aggrieved by the action or misrepresentation of any such itinerant vendor shall have a right of action on the bond for the recovery of his money advanced or damages and costs. Such bond shall remain in full force and effect for a period of six months after the expiration of any such license, and shall be held to assure only business transacted under the authority of the license issued pursuant to the application which such bond accompanied.

History: En. Sec. 4, Ch. 184, L. 1925. Licenses 26.
37 C.J. Licenses §§ 95, 164.

84-3106. (2429.20) Issuance of license—filing of application—endorsement. Upon filing of the application prescribed in section 84-3104, or the filing of such application and the bond prescribed in section 84-3105, in proper form, and upon the payment to the county treasurer of the sum required by section 84-3103, the county treasurer shall issue and deliver to the applicant, a license to carry on the business described in such application in the county in which such license is so issued, for a period of ninety days from the date of such license. Such license shall be nontransferable and shall have printed across the face thereof in bold type, the words "not transferable."

The county treasurer shall endorse upon each application the date of issuance of the license and shall immediately file such application with the county clerk and recorder of his county, who shall file the same in his office and keep an appropriate index thereof, which shall show the date

filed, the name of the applicant and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 184, L. 1925.

Licenses—22, 37.

37 C.J. Licenses §§ 98-107.

84-3107. (2429.21) Penalty for failure to exhibit license. Every such itinerant vendor doing business under the provisions of this act must upon demand of any person exhibit his license and permit the same to then and there be read by the person making such demand; and any such itinerant vendor who shall wilfully refuse or fail to exhibit his license as above provided is guilty of a misdemeanor and shall be fined not less than one hundred (\$100.00) dollars nor more than two hundred fifty (\$250.00) dollars for each offense.

History: En. Sec. 6, Ch. 184, L. 1925;
amd. Sec. 2, Ch. 109, L. 1937.

Licenses—40.

37 C.J. Licenses §§ 151 et seq., 172.

84-3108. (2429.22) Punishment for doing business without license. Every itinerant vendor as herein defined, doing business without first obtaining a license as required by this act is guilty of a misdemeanor, and shall be punished accordingly.

History: En. Sec. 7, Ch. 184, L. 1925.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity. 147 ALR 142.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

84-3109. (2429.23) Interpretation of provisions of law. Nothing in this act contained, is intended to operate so as to interfere with the power of the United States to regulate commerce between the states as such power is defined by the supreme court of the United States. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act provided that such municipality shall not impose any license fees in excess of twice the amount provided herein for county license fees.

History: En. Sec. 8, Ch. 184, L. 1925.

CHAPTER 32

LICENSES—MISCELLANEOUS COUNTY

- Section 84-3201. Billiard tables—pawnbrokers—theaters—intelligence offices—shooting gallery.
- 84-3202. Railways acting as warehouses.
- 84-3203. License of manufacturer of soft drinks.
- 84-3204. Keeper of skating rink or merry-go-round.
- 84-3205. Moving picture shows—amount of license.
- 84-3206. Laundries.
- 84-3207. Architects, builders, contractors, manufacturers.
- 84-3208. Manufacturers of malt.
- 84-3209. Penalty for failure to procure license.

84-3201. (2434) Billiard tables — pawnbrokers—theaters—intelligence offices—shooting gallery. License must be obtained for the purposes herein-after named, for which the county treasurer must require payment as follows:

1. Each proprietor of a billiard, pool, or bagatelle table not kept exclusively for family use, for each table three dollars and seventy cents per quarter; and for a bowling alley, five dollars per quarter for each alley; but no license must be granted for a term less than three months.

2. The manager or lessee of every theater (not a variety or concert theater) one hundred dollars per annum; except that in towns of a population of three thousand five hundred or less, in cases where no monthly license is paid, a license of two dollars for each single performance must be paid; for each single exhibition of opera or concert singer (not exhibited in any theater where a yearly license is paid), three dollars; for minstrels, legerdemain, or shows not herein provided for, five dollars for each single performance (when not in a theater where a yearly license is paid); for each variety or concert theater, whether an admittance fee is charged or not, seventy-five dollars per month; for every circus or menagerie, including side-shows, one hundred and twenty-five dollars per day; but no license must be collected from any amateur exhibition or concert for school or charitable or religious purposes, from any county, district or state agricultural fairs, rodeo associations, or from any veterans organizations not conducted for private gain.

Provided the county treasurer shall not issue any license for circuses, side-shows, carnivals, menageries, wild west shows, animal shows or tent shows to be held or performed within a period of thirty days just prior to or during the holding of any local, county, district or state fair or rodeo without first obtaining the written consent of the board of county commissioners of the county where application is made for such licenses to operate such shows.

3. For each pawnbroker, fifty-five dollars per quarter.

4. For each keeper of an intelligence office, ten dollars per quarter.

5. For each keeper of a shooting gallery, for gain, fifteen dollars per quarter.

History: En. Sec. 1, Ch. 117, L. 1903; re-en. Sec. 2758, Rev. C. 1907; re-en. Sec. 2434, R. C. M. 1921; amd. Sec. 1, Ch. 44, L. 1935; amd. Sec. 1, Ch. 94, L. 1945. Cal. Pol. C. Sec. 3380.

Cross-References

Carrying on business without license, penalty, sec. 94-1511.

Cities may license circuses, sec. 11-918.

Cities may license pawnbrokers, sec. 11-918.

Cities may license pool tables and bowling alleys, sec. 11-918.

Cities may license shooting galleries, sec. 11-918.

Pawnbroker's license, secs. 66-1601, 94-3701.

References

Cited or applied as section 2758, revised codes, in *Equitable Life Assur. Co. v. Hart*, 55 M 76, 84, 173 P 1062; *State ex*

rel. Griffin v. Greene et al., 104 M 460, 464, 67 P 2d 995.

Licenses—11(1), 17(2), 29; Pawnbrokers and Money Lenders—4; Theaters and Shows—3.

37 C.J. Licenses §§ 73, 87, 116; 48 C.J. Pawnbrokers and Money Lenders § 6; 62 C.J. Theaters and Shows § 21 et seq.

40 Am. Jur. 695, Pawnbrokers and Money Lenders, § 7.

Enforcement of contract by unlicensed lenders. 30 ALR 876.

Necessity of dealer's license to authorize sale of articles taken as security or to satisfy a debt. 36 ALR 684.

Validity of license tax or fee on show or place of amusement. 58 ALR 1340.

Commercial agency's failure to procure license as affecting enforceability of contract. 118 ALR 661.

Refusal of amusement license or permit as subject to judicial review. 124 ALR 247.

84-3202. (2435) Railways acting as warehouses. Each railway company acting in the capacity of a warehouse for the purpose of storing and

distributing goods, except any other than the capacity of common carriers, shall pay a license of ten dollars (\$10.00) per quarter in each county in which said business may be carried on.

History: En. Sec. 1, Ch. 22, L. 1907; Sec. 2763, Rev. C. 1907; amd. Sec. 1, Ch. 100, L. 1917; re-en. Sec. 2435, R. C. M. 1921; amd. Sec. 5, Ch. 28, Ex. L. 1933.

Warehousemen⁶.
67 C.J. Warehousemen § 9.

84-3203. (2436) License of manufacturer of soft drinks. Every manufacturer of nonintoxicating beverages, pop, soda waters, or other light drinks put up in bottles or other containers, in all cities having a population of ten thousand people or over, shall pay a license of sixty dollars semi-annually; in all cities or towns of more than five thousand and less than ten thousand in population, shall pay a license of forty dollars semi-annually; and in all cities or towns with a population of less than five thousand shall pay a license of twenty-five dollars semi-annually.

History: En. Sec. 3, p. 199, L. 1897; re-en. Sec. 2770, Rev. C. 1907; amd. Sec. 1, Ch. 26, L. 1921; re-en. Sec. 2436, R. C. M. 1921.

section 2770, revised codes, in *Equitable Life Assur. Co. v. Hart*, 55 M 76, 81, 173 P 1062; *State v. Yale Oil Corp. of South Dakota*, 88 M 506, 510, 295 P 255.

References

Cited or applied as section 4068, political code, before amendment, in *State v. Courtney*, 27 M 378, 382, 71 P 308; as

Licenses^{12, 29}.
37 C.J. Licenses §§ 73, 116.
Power to require license to operate factory or workshop. 38 ALR 1538.

84-3204. (2438) Keeper of skating rink or merry-go-round. Every keeper of a roller or ice-skating rink or merry-go-round in cities or towns of three thousand people and upward must procure a license and pay therefor the sum of fifteen dollars per quarter; and in towns of one thousand and less than three thousand people, ten dollars per quarter; and in towns of less than one thousand inhabitants, five dollars per quarter.

History: En. Sec. 4077, Pol. C. 1895; re-en. Sec. 2775, Rev. C. 1907; re-en. Sec. 2438, R. C. M. 1921; amd. Sec. 1, Ch. 66, L. 1945.

62 C.J. Theaters and Shows § 21 et seq.
Validity of license tax or fee on place of amusement. 58 ALR 1340.
Refusal of amusement license or permit as subject to judicial review. 124 ALR 247.

Theaters and Shows³.

84-3205. (2439) Moving picture shows—amount of license. No license shall be required for the operation or exhibition of moving picture shows in any city, town, or village where the population does not exceed one thousand five hundred. In all other cities the license shall be twenty-five dollars per year.

History: En. Sec. 1, Ch. 81, L. 1913; re-en. Sec. 2439, R. C. M. 1921.

ters. Opinions of Attorney General Vol. 18, No. 196.

Cross-Reference

Moving picture shows, licensing, secs. 84-3301 et seq.

NOTE.—This section held impliedly repealed by Chapter 91, L. 1937 (84-3301 to 84-3307) fixing the amount and for collection of licenses on moving picture thea-

References

Colwell v. City of Great Falls, 117 M 126, 143, 157 P 2d 1013.

Theaters and Shows³.

62 C.J. Theaters and Shows § 21 et seq.

84-3206. (2440) Laundries. Every person engaged in laundry business, other than the steam-laundry business, shall pay a license of ten dollars per quarter; provided, that this act shall not apply to the women engaged in the

laundry business, where not more than two women are engaged or employed or kept at work, and said license shall be for one place of business only.

History: En. Sec. 4, p. 200, L. 1897; re-en. Sec. 2776, Rev. C. 1907; re-en. Sec. 2440, R. C. M. 1921.

Constitutionality

Validity of license tax upon laundries upheld. *State ex rel. Sam Toi v. French*, 17 M 54, 41 P 1078; *State v. Camp Sing*, 18 M 128, 44 P 516.

The legislature is not required to tax all occupations equally or uniformly; hence it had power to single out proprietors of hand laundries and compel them to pay a license; and so long as the law was uniform as to all persons operating such laundries, there was no denial of the equal protection of the laws. *Quong Wing v. Kirkendall*, 39 M 64, 69, 101 P 250; affirmed in 223 U. S. 59, 63, 56 L. Ed. 350, 32 Sup. Ct. 192.

Id. Assuming that this section classifies laundries for license purposes, into steam

laundries and laundries operated by hand, such classification is not arbitrary or unreasonable.

This section is not, because of the exemptions therein contained, an unconstitutional denial of the equal protection of the laws. *Quong Wing v. Kirkendall*, 223 U. S. 59, 56 L. Ed. 350, 32 Sup. Ct. 192.

References

Cited or applied as section 2776, revised codes, in *Quong Wing v. Kirkendall*, 47 M 16, 17, 130 P 2.

Licenses \S 11(1), 29.

37 C.J. Licenses \S 73, 116.

33 Am. Jur. 359, Licenses, \S 34.

Privilege tax in respect of business involving continuous passage and repassage over state lines of laundry or other articles for use and the return of same or similar articles to user. 153 ALR 830.

84-3207. (2441) Architects, builders, contractors, manufacturers. Every architect, builder, contractor, or manufacturer, doing a business of more than fifteen thousand dollars per year, must pay a license of ten dollars per quarter.

History: En. Sec. 4082, Pol. C. 1895; re-en. Sec. 2778, Rev. C. 1907; re-en. Sec. 2441, R. C. M. 1921.

Constitutionality

The tax imposed by this section upon a manufacturer is the license or occupation tax provided for by the last sentence of section 1, article XII, of the constitution, and is not controlled by the uniformity clause contained in section 11 of the same article; hence such license tax may be graduated according to the amount of business done and is not open to attack as being discriminatory because one doing a business of \$15,000 or less a year is relieved from the payment thereof. *State v. Hennessey Co.*, 71 M 301, 303 et seq., 230 P 64.

Who Are Manufacturers

A merchant tailor is not a manufacturer within the meaning of this section. *State v. Johnson*, 20 M 367, 369, 51 P 820.

Held, that a company conducting a bakery is a manufacturer within the meaning of this section, providing for the payment of a license of ten dollars per quarter by every manufacturer doing a business of more than \$15,000 per year; a manufacturer being one who produces articles for use from either raw or manufactured materials by giving to them new forms, qualities, properties or combinations.

References

Cited or applied as section 2778, revised codes, in *Equitable Life Assur. Co. v. Hart*, 55 M 76, 84, 173 P 1062.

Licenses \S 11(4, 5), 12, 29.

37 C.J. Licenses \S 73, 75, 116.

3 Am. Jur. 998, Architects, \S 3.

Architect's failure to procure license as affecting enforceability of contract. 118 ALR 651.

84-3208. (2442) Manufacturers of malt. Every manufacturer of malt, when not engaged in the manufacture of malt liquors in the state of Montana, must pay a license of one hundred dollars per annum.

History: En. Sec. 5, p. 200, L. 1897; re-en. Sec. 2779, Rev. C. 1907; re-en. Sec. 2442, R. C. M. 1921.

References

Cited or applied as section 4083, political code, in *State v. Courtney*, 27 M 378,

382, 71 P 308; as section 2779, revised codes, in *Equitable Life Assur. Co. v. Hart*, 55 M 76, 84, 173 P 1062.

Licenses—12, 29.
37 C.J. Licenses §§ 73, 116.

84-3209. (2443) Penalty for failure to procure license. Every person who commences or carries on a business, trade, profession, or calling, for the transaction or carrying on of which a license is required by the provisions of any of the license laws of the state of Montana, without taking out or procuring such license is guilty of a misdemeanor, and shall, unless specific punishment is prescribed by some other law of this state, be punishable as in the case of other misdemeanors and in addition thereto shall be liable to a penalty of ten per cent. of the amount of said license, which said penalty must be added to the amount of said license, and collected by the county treasurer at the time of the collection of the license, but the payment of said penalty shall in no event relieve any person from prosecution for such misdemeanor.

History: En. Sec. 6, p. 200, L. 1897; re-en. Sec. 2780, Rev. C. 1907; amd. Sec. 1, Ch. 25, L. 1921; re-en. Sec. 2443, R. C. M. 1921.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

Operation and Effect

This section does not authorize an action to collect a license tax, but merely imposes a penalty for doing business without

the license required. *State ex rel. Carter v. Kall*, 53 M 162, 165, 162 P 385.

References

Foorman v. Boland, 59 M 185, 196 P 147.

Licenses—40, 41.

37 C.J. Licenses §§ 145 et seq., 151 et seq., 172.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity. 147 ALR 142.

CHAPTER 33

LICENSES—MOVING PICTURE THEATERS

- Section 84-3301. License required for operating movie theaters.
84-3302. Application for license.
84-3303. State board of equalization to issue license.
84-3304. Quarterly renewal of licenses.
84-3305. License fees.
84-3306. Penalty for violation of act.
84-3307. Exceptions.

84-3301. License required for operating movie theatres. It shall be unlawful for any person, firm, corporation, association or copartnership, either foreign or domestic, to operate, maintain, open or establish any movie theatre, without first having obtained a license to do so from the state board of equalization as hereinafter provided.

History: En. Sec. 1, Ch. 91, L. 1937.

Cross-Reference

County or city license, secs. 84-3201, 84-3205.

Constitutionality

Ch. 91, L. 1937 (84-3301 et seq.) providing for the licensing of moving picture theaters, held not open to the constitutional objection contained in art. V, sec. 19, that as finally passed it was so altered or amended as to change its original pur-

pose; and a license tax imposed for the privilege of doing business is not subject to the uniformity provisions of art. XII, secs. 1 and 11, const.; also held, not in conflict with the fourteenth amendment of the U. S. Constitution. *State ex rel. Griffin v. Greene*, 104 M 460, 462, 463, 465, 67 P 2d 995.

Not Unlawful Discrimination

Ch. 91, L. 1937 (84-3301 et seq.) operating alike upon all operators of moving picture theaters, and allowing all an exemp-

tion of \$3,000 gross income from the license tax imposed, held not subject to the claim of unlawful discrimination, exclusion of vaudeville from statute not rendering classification arbitrary. State ex rel. Griffin v. Greene, 104 M 460, 463, 67 P 2d 995.

References

Colwell v. City of Great Falls, 117 M 126, 143, 157 P 2d 1013.

Theaters and Shows  3.

61 C.J. Theaters and Shows § 21 et seq.

Validity of license tax or fee on show or place of amusement. 58 ALR 1340.

Refusal of amusement license or permit as subject to judicial review. 124 ALR 247.

84-3302. Application for license. Any person, firm, corporation, association or copartnership desiring to operate, maintain, open or establish a movie theatre in this state shall apply to the state board of equalization for a license to do so. The application for a license shall be made on a form which shall be prescribed and furnished by the state board of equalization, and shall set forth the name of such movie theatre, the owner, manager, trustee, lessee, receiver or other person desiring such license; the location, including the street number of such movie theatre, and other such facts as the state board of equalization may require. If the applicant desires to operate, maintain, open or establish more than one such movie theatre, he shall make a separate application for a license to operate, maintain, open or establish each such movie theatre.

History: En. Sec. 2, Ch. 91, L. 1937.

84-3303. State board of equalization to issue license. As soon as practicable after the receipt of any such application, the state board of equalization may, if the application is found to be satisfactory and if the license fees as herein prescribed shall have been paid, issue to the applicant a license for such movie theatre, for which an application for a license shall have been made. Each licensee shall display the license so issued in a conspicuous place in the movie theatre for which said license is issued.

History: En. Sec. 3, Ch. 91, L. 1937.

84-3304. Quarterly renewal of licenses. All licenses shall be issued quarterly on the first day of April, July, October and January. On or before the first day of each such quarter every person, firm, corporation, association or copartnership coming under the provisions of this act shall apply to the state board of equalization for a renewal of such license.

History: En. Sec. 4, Ch. 91, L. 1937.

84-3305. License fees. Every person, firm, corporation, association or copartnership, opening, establishing, operating or maintaining moving picture theatres within the state under the same management, supervision or ownership, shall pay the license fees hereafter prescribed for the privilege of establishing, operating or maintaining such movie theatres. The license fees herein prescribed shall be paid annually.

The license fees herein prescribed are payable quarterly on the first day of April, July, October and January of each year and shall be as follows:

One and one quarter (1¼) per centum of the gross proceeds from the sale of tickets of admission in excess of the sum of three thousand dollars (\$3,000.00) per quarter.

History: En. Sec. 5, Ch. 91, L. 1937.

84-3306. Penalty for violation of act. Any person, firm, corporation, copartnership, or association who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500.00), and no such license shall be issued to the violator for a period of three (3) years next succeeding the conviction.

History: En. Sec. 6, Ch. 91, L. 1937.

84-3307. Exceptions. No such license fee shall be collected from any school, church, or charitable organization.

History: En. Sec. 8, Ch. 91, L. 1937.

CHAPTER 34

LICENSES—PRODUCE WHOLESALERS

Tit. 84, C. 34 (2443.1— 2443.16 RCM '35) (S.L. '33, C. 164) 192 P. (2d) 313	Section 84-3401.	Produce wholesaler, meaning of term.
	84-3402.	Produce wholesalers' license—who shall pay.
	84-3403.	Definitions.
	84-3404.	Application for license—contents—bond—expiration date—schedule of commissions and charges to be filed.
	84-3405.	Investigation of applicant—hearings—findings of commissioner.
	84-3406.	Records to be kept—contents.
	84-3407.	Inspection and report concerning produce.
	84-3408.	Enforcement of provisions of act—hearings.
	84-3409.	Record of proceedings and hearings to be kept by commissioner—record on review.
	84-3410.	Appeal to district court.
	84-3411.	Time for appeal.
	84-3412.	Notice on appeal—certification of record to district court.
	84-3413.	Regulations for enforcement of act may be made by commissioner.
	84-3414.	Cooperation with similar agencies.
	84-3415.	Disposition of license fees.
	84-3416.	Violation of provisions or regulations deemed misdemeanor—penalty.

84-3401. (2443.1) Produce wholesaler, meaning of term. For the purpose of this act any person who shall buy to sell at wholesale, or contract to buy to sell at wholesale, or who shall handle at wholesale for the purpose of resale, or who shall handle at wholesale on account of, or as agent for another, any produce as herein defined; shall be deemed a dealer at wholesale. Provided, that a trucker operating for hire under an M. R. C. license and not buying or selling any produce as herein defined, shall not come under the provisions of this act. Provided further, that the provisions of this act shall not apply to dealers at retail.

History: En. Sec. 1, Ch. 164, L. 1933.

Licenses 16(2).

37 C.J. Licenses § 78.

84-3402. (2443.2) Produce wholesalers' license—who shall pay. No person shall engage in, or purport to be engaged in, or hold himself out as being engaged in the business of a dealer at wholesale, or as being a dealer at wholesale, as defined in this act, unless he shall be licensed to carry on such business by the commissioner. Provided, that the provisions of this act shall not apply to a farmer or gardener selling his own products, but who shall whenever called upon to do so by an inspector furnish a sworn statement that the goods handled by him were actually grown by him and the inspector is hereby authorized for the purpose of this act to administer the oath.

History: En. Sec. 2, Ch. 164, L. 1933;
am. Sec. 1, Ch. 173, L. 1935.

33 Am. Jur. 321, Licenses, generally.
Failure to procure occupational or business license or permit as affecting validity or enforceability of contract. 30 ALR 834.

Licenses 16(2).
37 C.J. Licenses § 78.

84-3403. (2443.3) Definitions. a. The term "produce" as used in this act shall mean and include the natural products of the farm, and natural products of the orchard, vineyard, garden and apiary, raw and manufactured; (except grains, dairy products, livestock, poultry and poultry products), when handled for the purpose of resale.

b. The term "person" shall mean an individual, or group of persons, exchange, firm, copartnership, corporation or association.

c. The term "commissioner" shall mean the commissioner of agriculture of the state of Montana.

History: En. Sec. 3, Ch. 164, L. 1933.

Licenses 16(2).
37 C.J. Licenses § 78.

84-3404. (2443.4) Application for license—contents—bond—expiration date—schedule of commissions and charges to be filed. Licenses to engage in the business of a dealer at wholesale within the state of Montana shall be issued by the commissioner to such reputable persons as shall apply therefor, pay the prescribed fee and comply with the conditions herein specified, to-wit:

a. The application shall be in writing, accompanied by the prescribed fee, and under oath shall set forth the place where the applicant intends to carry on the business for which the license is desired, and a separate license shall be required for each place of business, and for the purpose of this act each truck used for assembling and distributing produce other than from a permanently established place of business through which all business of sales and accounts are handled shall be considered a separate place of business; the estimated amount of business to be done monthly; the full names of the persons constituting the firm, in case the applicant is a copartnership; the names of the officers of the corporation and where incorporated, if a corporation; and a financial statement showing the value and character in a general way of the assets and the amount of liabilities of the applicant.

b. Before issuing any license as provided by this act, the commissioner shall require the applicant to execute and file with him a good and sufficient bond to the state of Montana in an amount to be fixed by the commissioner based on the monthly business to be transacted by the applicant, said bond to be not less than one thousand dollars (\$1,000.00). The commissioner may from time to time require additional bond should the business transacted warrant such increase under penalty of revoking the license. Said bond to be executed by the applicant as principal and a surety company authorized to do business in this state as surety; the form thereof to be fixed by the commissioner, conditioned for the faithful performance of his duties as a dealer at wholesale; for the observance of all laws relating to the carrying on of the business of a dealer at wholesale; for the payment, when due, of the purchase price of produce purchased by him; for the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commis-

sion and the prompt payment to persons entitled thereto of the proceeds of such sales less lawful charges, disbursements and commission. Such bond shall cover all wholesale produce business transacted in whole or in part within the state of Montana.

c. All licenses shall expire December 31st of each year; the license, or a certified copy thereof, shall be kept posted in the office of the licensee at each place within the state where he transacts business; the fee for each license shall be one hundred dollars (\$100.00) and for each certified copy thereof one dollar (\$1.00). Except that where a truck is the place of business the license fee for the first truck shall be one hundred dollars (\$100.00) and for each additional truck fifty dollars (\$50.00).

d. The applicant shall file with the commissioner a schedule of his commissions and charges for services in connection with produce handling on account of or as agent for another.

History: En. Sec. 4, Ch. 164, L. 1933;
amd. Sec. 2, Ch. 173, L. 1935.

Licenses—22, 26, 29.
37 C.J. Licenses §§ 95, 98, 116, 164.

84-3405. (2443.5) Investigation of applicant—hearings—findings of commissioner. The commissioner shall examine such application and cause an investigation to be made of said applicant and his business, business rating, character and reputation. If, from such examination and investigation the commissioner shall determine that the said applicant is in the matter of his business, business rating, character and reputation not properly qualified to engage in business as a dealer, he shall refuse to grant a license and shall deny the application, and notify the applicant in writing of his decision. Any applicant whose application is denied by the commissioner may within ten (10) days after the mailing of said notice of rejection, petition said commissioner for a hearing and thereupon said commissioner shall afford applicant an opportunity for a hearing on a date not less than ten (10) nor more than twenty (20) days after the receipt of said petition. Any and all persons who may have objected to the licensing of applicant shall be given at least ten (10) days' notice of said hearing by mail. Said hearing shall be informal and the commissioner shall hear any and all evidence which may be offered or adduced either for or against said applicant, in the matter of his business, business rating, character and reputation. After hearing all such evidence, the commissioner shall make his findings of fact on which he may again deny the said application or grant the same as he finds the facts to be, and the said findings of fact made by the commissioner shall be conclusive, subject however, to the right of appeal as herein-after provided.

History: En. Sec. 5, Ch. 164, L. 1933.

84-3406. (2443.6) Records to be kept—contents. Every dealer in produce shall make and keep a full and complete record of all produce handled by him covering the following facts:

- a. The name and address of the producer or shipper.
- b. The date of receipt of each consignment.
- c. The kind and quantity of produce received.
- d. The agreed purchase price or commission charged.
- e. Date of sale.

- f. Price at which sold.
- g. The name of the person, firm or corporation to whom sold.
- h. An itemized statement of charges to be paid by the producer in connection with the sale.
- i. The above information and record shall be open for confidential inspection of the commissioner or his deputies.

History: En. Sec. 6, Ch. 164, L. 1933.

Licenses 30.

37 C.J. Licenses § 117.

84-3407. (2443.7) Inspection and report concerning produce. Whenever any dealer at wholesale, to whom produce has been shipped, or consigned for sale on a commission basis, or on consignment or under any circumstances wherein the title to said produce remains with the shipper, has received the same, he shall within a reasonable time thereafter, make a written report to the shipper, which report shall include the exact time of arrival; the quantity and quality of the produce; and in the event such produce is received in a decayed or damaged condition noticeable upon arrival, the dealer shall have the common carrier or horticultural inspector of the state of Montana make proper record certifying such condition; and the dealer shall notify the consignor promptly so that the consignor can take further action to verify the report.

History: En. Sec. 7, Ch. 164, L. 1933.

84-3408. (2443.8) Enforcement of provisions of act—hearings. For the purpose of enforcing the provisions of this act, the commissioner upon his own motion may, or upon verified complaint against any dealer or any person, firm, exchange, association, or corporation assuming or attempting to act as such, shall have full authority to, and must make any and all investigations he deems necessary, and he shall have at all times free and unimpeded access to all buildings, yards, warehouses, storage and transportation or any other facilities or places in which any produce is kept, stored, handled or transported. If the commissioner, upon investigation, shall have reason to believe that any dealer is not acting in accordance with the provisions of this act, or upon the filing of a verified complaint against any dealer, it shall be the duty of the commissioner to have personal service made on said dealer or to mail by registered mail a complaint, or a copy of the verified complaint against said dealer, and in the event dealer fails to make informal adjustment or settlement of the charges set forth therein, to the satisfaction of the commissioner, the commissioner shall give notice of the time and place of a formal hearing thereon. Notice of any hearing shall be given at least twenty (20) days prior thereto and said hearing shall be held in the city or town in which the transaction complained of is alleged to have occurred.

He shall have full authority to administer oaths and take testimony hereunder, to issue subpoenas requiring the attendance of witnesses before him, together with all books, memoranda, papers and other documents, articles or instruments; to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation, and all parties disobeying the orders of subpoenas of said commissioner shall be guilty of contempt and shall be certified to any district court of the state,

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(2443.8)
RCM '35)
(S.L. '33,
C. 164, Sec. 8)
192 P. (2d)
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which court shall punish any such contempt. Copies of records, inspection certificates, certified reports and all papers on file in the office of the commissioner shall be prima facie evidence of the matters therein contained.

At the time and place appointed for such hearing, the commissioner shall hear all parties and their evidence and thereupon the commissioner shall dismiss the charges, or suspend the license of said dealer for a specified period, or revoke the same, or make such other appropriate order as may be deemed just and proper; any order shall specify the effective date thereof and any order other than the one suspending or revoking a license shall automatically suspend such license until such order is complied with.

History: En. Sec. 8, Ch. 164, L. 1933.

84-3409. (2443.9) Record of proceedings and hearings to be kept by commissioner—record on review. The commissioner shall keep a full and complete record of all proceedings and hearings had before the commissioner of any formal hearing, and all testimony produced before the commissioner shall be taken down by a stenographic reporter appointed by the commissioner, and the party shall be entitled to be heard in person or by attorney. In case of an action to review any order or decision of the commissioner a transcript of such testimony together with all exhibits and of the pleadings, records, and proceedings in the cause shall constitute the record.

History: En. Sec. 9, Ch. 164, L. 1933.

84-3410. (2443.10) Appeal to district court. Any action of the state commissioner of agriculture with reference to the granting of, or the refusal to grant, or to renew any license, or with reference to the revocation or suspension of any license granted under the provisions of this act, be reviewed upon appeal to any district court of the state of Montana, but pending final determination of any such review, in the case of the revocation of or refusal to renew the license of any produce dealer, such license shall be deemed in full force and effect until the final determination of such proceedings; provided, that no license shall be refused during the time or on account of the pendency of any review proceedings.

History: En. Sec. 10, Ch. 164, L. 1933.

Licenses 22, 36.

37 C.J. Licenses §§ 98, 100 et seq.

84-3411. (2443.11) Time for appeal. Within thirty (30) days after the rendition of the decision by the commissioner and within twenty (20) days after notice thereof any party affected thereby may appeal to the district court of the judicial district of the state of Montana, in and for the county in said state wherein said transaction occurred or the dealer may have his place of residence, or if such dealer be a corporation may have its principal office or place of business, and said appeal shall be for the purpose of having the lawfulness of the original order or decision of the commissioner inquired into and determined.

History: En. Sec. 11, Ch. 164, L. 1933.

84-3412. (2443.12) Notice on appeal—certification of record to district court. Said appeal shall be taken by serving a written notice of said appeal on the commissioner, which said service shall be made by the delivery of a

copy of such notice to said commissioner and filing the original with the clerk of the court to which said appeal is taken. A copy of such notice must also be served upon the adversary party, if there be any, by mailing the same to said adversary party to such address of said party. The order of filing and serving of said notice is immaterial.

Immediately upon service upon said commissioner of said notice the said commissioner shall certify to said district court the entire record of proceedings including all testimony and evidence taken by said commissioner, with the clerk of said district court. Upon said appeal said district court shall act as a court of review.

History: En. Sec. 12, Ch. 164, L. 1933.

84-3413. (2443.13) Regulations for enforcement of act may be made by commissioner. The commissioner shall have power and it shall be his duty from time to time to make and publish uniform rules and regulations not inconsistent with the law for carrying out and enforcing the provisions of this act.

History: En. Sec. 13, Ch. 164, L. 1933.

84-3414. (2443.14) Cooperation with similar agencies. The commissioner shall cooperate with the United States department of agriculture and with other federal authorities, and with the state and municipal authorities of this and other states, and do and perform such other acts and things as may be necessary and proper in carrying out the purposes of this act.

History: En. Sec. 14, Ch. 164, L. 1933.

84-3415. (2443.15) Disposition of license fees. All sums received by the commissioner for license fees under the provisions of this act shall be paid into the state treasury and deposited in the special fund known as the "revolving fund of the division of horticulture" to be expended by the chief of said division upon approval of the treasurer of the state of Montana, and all moneys so deposited shall be held subject to the uses of the chief of the division of horticulture for the purpose of carrying out the provisions of this act.

History: En. Sec. 15, Ch. 164, L. 1933.

Licenses—33.
37 C.J. Licenses § 129.

84-3416. (2443.16) Violation of provisions or regulations deemed misdemeanor—penalty. Any person who shall violate any of the provisions of this act, or who shall fail to comply with the regulations prescribed by this act, or who shall fail or neglect to obey any lawful order of the state department of agriculture, or the commissioner, or any other officer thereof made pursuant to the authority of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) and not more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not to exceed six months, or both such fine and imprisonment, and such fine shall be paid into the state treasury and deposited as provided in section 84-3415; provided, however, that nothing in this act will apply to a consumer or group of consumers acting co-operatively in obtaining produce for their own use only and not for resale.

History: En. Sec. 18, Ch. 164, L. 1933; Licenses ~~40~~.
 amd. Sec. 3, Ch. 173, L. 1935. 37 C.J. Licenses §§ 151 et seq., 172.

CHAPTER 35

LICENSES—PUBLIC CONTRACTORS

Section	84-3501.	Definitions.
	84-3502.	Unlawful to engage in public contracting business without license.
	84-3503.	State board of equalization as registrar.
	84-3504.	Application for license—contents.
	84-3505.	Classes of licenses—rights granted under licenses—fees.
	84-3506.	Investigation of applicant and granting of license—renewals—fees.
	84-3507.	Bids to show bidder is licensed and class of bid.
	84-3508.	Expense of act, how paid—disposal of funds.
	84-3509.	Records—public may inspect—certified copies—fees.
	84-3510.	Complaints against licensee—grounds—investigation—hearing—suspension of license—appeals.
	84-3511.	Relicensing not to be within year of cancellation.
	84-3512.	Penalty for acting without license.

84-3501. (2433.1) **Definitions.** The following words, terms and phrases in this act are, for the purposes hereof, defined as follows:

(a) The word "person" includes any individual, firm, copartnership, association, corporation or other group or combination acting as a unit, and the plural as well as the singular number, unless the intent to give a more limited meaning is clearly disclosed by the context hereof.

(b) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract with the state of Montana, or with any board, commission or department thereof, or with any board of county commissioners, or with any city or town council, or with any agency of any thereof, or with any other public board, body, commission or agency, authorized to let or award contracts for the construction or reconstruction of any public work when the contract cost, value or price thereof exceeds the sum of one thousand dollars (\$1,000.00).

(c) The term "public contractor" includes subcontractors undertaking to perform the work covered by the original contract, or any part thereof, the contract cost, value or price of which exceeds the sum of one thousand dollars (\$1,000.00).

History: En. Sec. 1, Ch. 178, L. 1935. Licenses ~~11~~(5).
 37 C.J. Licenses § 75.

84-3502. (2433.2) **Unlawful to engage in public contracting business without license.** From and after the passage and approval of this act, it shall be unlawful for any person, firm, copartnership, corporation, association or any combination of any thereof, to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided.

History: En. Sec. 2, Ch. 178, L. 1935.

84-3503. (2433.3) **State board of equalization as registrar.** The state board of equalization of the state of Montana is hereby constituted the registrar for the purpose of this act, and is empowered to employ such assistance and to procure such records, supplies and equipment as may be necessary to carry out its provisions.

History: En. Sec. 3, Ch. 178, L. 1935.

Licenses 22.

37 C.J. Licenses § 98.

84-3504. (2433.4) Application for license—contents. To obtain a license under this act, the applicant shall submit, on such forms as the registrar shall prescribe, an application, under oath, which shall contain a statement of the applicant's experience and qualifications as a contractor; the value and character of contract work completed, and for whom performed during five (5) years prior to the filing of such application; and a complete financial statement on such forms and disclosing such information as shall be required by the registrar. Such application shall also contain such other information as may be requested by the registrar under such rules and regulations as may be adopted by said registrar and which will assist said registrar in determining the applicant's fitness to act in the capacity of a public contractor as defined in this act; and such application shall also contain a statement that the applicant desires the issuance of a license under the terms of this act, and shall specify the class of license applied for as hereinafter provided.

History: En. Sec. 4, Ch. 178, L. 1935.

33 Am. Jur. 321, Licenses, generally.

84-3505. (2433.5) Classes of licenses—rights granted under licenses—fees. There shall be three classes of licenses issued under the provisions of this act; and such classes of licenses are hereby designated as Classes A, B, and C. Any applicant for a license under the provisions hereof, shall specify in his application the class of license applied for.

The holder of a Class A license shall be entitled to engage in the public contracting business within the state of Montana without any limitation as to the value of a single public contract project, subject, however, to such prequalification requirements as may be imposed by the public body or bodies referred to in section 84-3501(b) and at the time of making the application for such license the applicant shall pay to the registrar a fee in the sum of two hundred dollars (\$200.00).

The holder of a Class B license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of fifty thousand dollars (\$50,000.00); and shall pay unto the registrar as a license fee the sum of one hundred dollars (\$100.00) for such Class B license at the time of making application therefor.

The holder of a Class C license shall be entitled to engage in the public contracting business within the state of Montana, but shall not be entitled to engage in the construction of any single public contract project of a value in excess of twenty-five thousand dollars (\$25,000.00); and shall pay unto the registrar as a license fee the sum of ten dollars (\$10.00) at the time of making application therefor.

Nothing herein shall require any contractor to pay any license fee on any public contract project of a value less than one thousand dollars (\$1,000.00), nor shall any contractor be required to have a license hereunder in order to submit a bid or proposal for contracts advertised to be let by the Montana highway commission where federal aid is obtained from the bureau of public roads or the department of agriculture of the United States; neither shall a successful bidder be required to be licensed as pro-

vided herein before the awarding and execution of any contract to be let by the state highway commission where federal aid from the bureau of public roads or the department of agriculture of the United States is involved.

History: En. Sec. 5, Ch. 178, L. 1935; Licenses 23, 29.
amd. Sec. 1, Ch. 113, L. 1939. 37 C.J. Licenses §§ 99, 116 et seq.

84-3506. (2433.6) Investigation of applicant and granting of license—renewals—fees. It shall be the duty of the registrar to investigate and determine the applicant's fitness to act in the capacity of public contractor, as defined in this act, and no license shall be issued unto such applicant until the expiration of ten (10) days from and after the filing of such application. The license so issued in pursuance of the first application shall entitle the licensee to act as a public contractor within this state, subject to the limitations of such license, until the expiration of the then current calendar year.

Any license issued under the provisions of this act may be renewed for each successive calendar year by obtaining from the registrar a certificate of renewal thereof. For the purpose of obtaining such certificate of renewals, the licensee shall file with the registrar an application therefor, stating the class of license applied for and containing the same information as that required in the application for the original license. The application for such certificate of renewal must be made to the registrar on or before the first day of March of each successive calendar year; and such renewal certificate shall be good for the then current calendar year.

At the time of filing the application for a certificate of renewal, the applicant shall pay unto the registrar a license fee equal to fifty (50) per cent of the license fee for the original license; provided that if any applicant for a certificate of renewal shall apply for a renewal under a different class from the license theretofore issued to him, such new license shall only be issued upon the same showing and under the same terms and conditions and upon payment of the same fee required for the issuance of an original license.

All certificates of renewal, wherein the applicant does not apply for a change in the class of license shall be issued by the registrar to the applicant forthwith when the application is filed and the license renewal fee paid.

History: En. Sec. 6, Ch. 178, L. 1935; Licenses 22, 36.
amd. Sec. 1, Ch. 113, L. 1937. 37 C.J. Licenses §§ 98-100 et seq.

84-3507. (2433.7) Bids to show bidder is licensed and class of bid. All bids and proposals for the construction of any public contract project subject to the provisions of this act shall contain a statement showing that the bidder or contractor is duly and regularly licensed hereunder. The number and class of such license then held by such public contractor shall appear upon such bid or proposal, and no contract shall be awarded to any contractor unless he is the holder of a license in the class within which the value of the project shall fall as hereinbefore provided.

History: En. Sec. 7, Ch. 178, L. 1935. Licenses 36.
37 C.J. Licenses § 66.

84-3508. (2433.8) Expense of act, how paid—disposal of funds. Any and all expenses incurred by the registrar in the administration of this act

shall be paid out of the fund accruing from the fees imposed by and collected under the provisions hereof. All moneys collected hereunder, less the expense incurred in the administration of this act, shall be deposited by the registrar with the state treasurer, who shall credit them to the general fund of the state.

History: En. Sec. 8, Ch. 178, L. 1935.

Licenses—33.

37 C.J. Licenses § 129.

84-3509. (2433.9) Records—public may inspect—certified copies—fees.

The registrar shall maintain in said registrar's office at Helena, Montana, open to public inspection during office hours, a complete indexed record of all applications and all licenses issued and all certificates of renewal and of cancellations or suspensions thereof; and shall furnish a certified copy of any license issued, of renewal certificates, or of the cancellations or suspensions thereof, upon receipt of the sum of one dollar (\$1.00); and such certified copy shall be received in all courts and elsewhere as prima facie evidence of the facts stated therein.

History: En. Sec. 9, Ch. 178, L. 1935.

Licenses—21.

37 C.J. Licenses § 96 et seq.

84-3510. (2433.10) Complaints against licensee — grounds — investigation—hearing—suspension of license—appeals. Any person, firm, copartnership, corporation, association or other organization may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

- (1) Abandonment of any contract without legal excuse;
- (2) Diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this act, or for a specified purpose in the prosecution or completion of any contract, and their application or use for any other contract, obligation or purpose with intent to defraud or deceive creditors or the owner;
- (3) The doing of any wilful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;
- (4) The making of any false statement in any application for a license or renewal thereof.

Upon the filing of such complaint the registrar shall investigate the charge and within sixty days after the filing of such complaint shall render and file said registrar's decision with said registrar's reasons therefor. If the registrar's decision be that the licensee has been guilty of any of such acts or omissions, said registrar shall suspend the contractor's license. At any time within twenty days thereafter the complainant or the contractor may petition the registrar for a rehearing. In the order granting or denying such rehearing the registrar shall set forth a statement of the particular grounds and reasons for said registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the registrar shall set the matter for further hearing on due notice to the parties, and within thirty days after submission of the matter, serve said registrar's decision after rehearing in like manner as an original decision.

The filing of such petition for rehearing as to the registrar's actions in suspending or cancelling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

Within thirty days after the decision on rehearing, any party aggrieved by such decision of the registrar may appeal therefrom to the district court in and for the county in which the licensee under this act resides or does business as a public contractor, by serving upon the registrar a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

In all cases where the licensee has filed his notice of appeal from the decision of the registrar or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy.

History: En. Sec. 10, Ch. 178, L. 1935.

Licenses—38.

37 C.J. Licenses § 109 et seq.

84-3511. (2433.11) Relicensing not to be within year of cancellation. After cancellation of a license such licensee shall not be relicensed during the current calendar year in which the offense was committed.

History: En. Sec. 11, Ch. 178, L. 1935.

84-3512. (2433.12) Penalty for acting without license. Any person, firm, copartnership, corporation, association or other organization acting in the capacity of public contractor within the meaning of this act, without a license as herein provided, shall be guilty of a misdemeanor and shall, upon conviction thereof, if a person, be punished by a fine of not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail for a term not to exceed six months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply, upon conviction, to any member of a copartnership, or to any construction, managing or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this act.

History: En. Sec. 12, Ch. 178, L. 1935.

Licenses—40.

37 C.J. Licenses §§ 151 et seq., 172.

CHAPTER 36

LICENSES—SLOT MACHINES

Section	84-3601.	Slot machines operation when and how permitted.
	84-3602.	"Hickey Law" declared to be in effect.
	84-3603.	What organizations may be licensed.
	84-3604.	Slot machine license fund—when license to be procured.
	84-3605.	Schedule of fees for licenses.
	84-3606.	Slot machine defined.
	84-3607.	Counties, cities and towns may also license.
	84-3608.	Licensees shall not permit minors to play machines.
	84-3609.	Forms to be prescribed by state board of equalization.
	84-3610.	Penalty—revocation of license.

84-3601. Slot machines operation when and how permitted. No slot machine shall hereafter be used, operated, kept or maintained for use or

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84-3605

operation within the state of Montana by any person or persons whomsoever save and except as in this act provided. In addition to its ordinary meaning the word "persons" includes both natural and artificial persons and embraces all partnerships, corporations, associations, societies and all other persons of every sort and kind.

History: En. Sec. 1, Ch. 142, L. 1945.

84-3602. "Hickey Law" declared to be in effect. The provisions of the so-called "Hickey Law", sections 94-2401 to 94-2403 prohibiting the running, keeping or operating of slot machines, are hereby declared to be in full force and effect.

History: En. Sec. 2, Ch. 142, L. 1945.

84-3603. What organizations may be licensed. Religious organizations, fraternal organizations, charitable, or nonprofit organizations, before using, operating, keeping and maintaining for use, slot machines, must first procure the license and pay the license fee provided by this act, provided however, that such religious organizations, fraternal organizations, charitable or nonprofit organizations are the sole and complete owners of said slot machines, and that the entire profit, if any therefrom, shall go to said organizations.

History: En. Sec. 3, Ch. 142, L. 1945.

84-3604. Slot machine license fund—when license to be procured. The state board of equalization is hereby authorized, empowered and directed to collect the license fees herein provided for. All monies received from said state licenses, shall be paid over by the state board of equalization to the state treasurer and deposited to the credit of a fund hereby created, known as the "slot machine license fund". Out of said fund there shall be paid, on claims regularly presented against the state and approved by the state board of examiners, the cost of enforcing this act, including the salaries and traveling expenses of all agents or employees necessarily employed by the state board of equalization, and all other expenses of enforcing the provisions of this act.

At the end of each quarter year, commencing with the quarter ending September 30, 1945, the state treasurer shall deposit in the general fund of the state of Montana any unexpended balance in said slot machine license fund in excess of ten thousand dollars (\$10,000.00).

All licenses issued under this act shall expire on the first day of January following the issuance of said license and a full year's license fee shall be charged regardless of when said license is issued.

History: En. Sec. 4, Ch. 142, L. 1945;
 amd. Sec. 1, Ch. 285, L. 1947.

84-3605. Schedule of fees for licenses. A license for the operation of any slot machine or slot machines within the state of Montana shall first be procured from the state board of equalization of the state of Montana (hereinafter referred to as the "board"), by any of the organizations or persons enumerated in section 84-3603, desiring to use or operate the same, and the annual license fee shall be as follows: A license fee of two hundred (\$200.00) dollars per annum per machine shall be paid to the

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board for such license in cities of over ten thousand (10,000) population according to the last United States census; in all cities or towns with a population of over five thousand (5,000) and less than ten thousand (10,000) such persons and organizations shall pay a license fee of one hundred (\$100.00) dollars per machine per annum; in all cities or towns with a population of less than five thousand (5,000) such persons and organizations shall pay an annual license fee of fifty (\$50.00) dollars per machine per annum; all organizations not operating within the limits of the incorporated city or town shall pay an annual license fee of fifty (\$50.00) dollars per annum per machine. For each separate slot in any slot machine an additional license fee equivalent to the fee hereinbefore provided for, shall be paid.

History: En. Sec. 5, Ch. 142, L. 1945.

84-3606. Slot machine defined. A slot machine is herein defined as a machine operated by inserting a coin, token or trade check therein by the player and from the play of which he obtains, or may obtain, money, checks, chips or tokens redeemable in money.

History: En. Sec. 6, Ch. 142, L. 1945.

84-3607. Counties, cities and towns may also license. In addition to the state license fee herein provided for, any county, city or incorporated town of the state may, in the discretion of its board of county commissioners, city or town council or other governing body of such city, license and impose an additional license tax of not to exceed one-half ($\frac{1}{2}$) of the license fees herein provided for in the case of counties and not to exceed one-fourth ($\frac{1}{4}$) of the license fee herein provided for in the case of cities and towns for each and every slot machine operated in said county, city or town. Such licenses shall be issued by the county, city or town treasurer and the fees for same shall be credited to the county poor fund in the case of counties and to the city or town general fund in the case of cities and towns.

History: En. Sec. 7, Ch. 142, L. 1945.

84-3608. Licensees shall not permit minors to play machines. No licensee shall permit any person under the age of majority to play any slot machine used, operated or maintained by said licensee or to loiter about the premises where such slot machine is kept or operated. Any violation of the provisions of this section shall constitute a misdemeanor and be punishable as provided in section 84-3610.

History: En. Sec. 8, Ch. 142, L. 1945.

84-3609. Forms to be prescribed by state board of equalization. The form of licenses to be issued under this act shall be prescribed by the state board of equalization. Said board shall also promulgate the forms to be used in applying for such licenses and may require the applicant for such license to state in his application such facts as the board may deem necessary to enable it to pass upon such application, including the name and address of the applicant and the premises where said slot machine or machines are to be kept and operated and such other information as the board may require. The making of any false statement in said application shall constitute a misdemeanor and be punishable as provided in section 84-3610. Each machine licensed under this act shall at all times have attached to

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84-3701

it an official stamp or marker prescribed by the state board of equalization, showing that the tax provided by this act has been paid.

History: En. Sec. 9, Ch. 142, L. 1945.

84-3610. Penalty—revocation of license. Any person, partnership, club, society, fraternal order, corporation, co-operative association or any other individual or organization which has not been issued a license under this act and which maintains for use or permits the use of any slot machine as herein defined, on any place or premises owned, occupied or controlled by him or it, shall be guilty of a misdemeanor and shall be punishable by a fine of not less than one hundred (\$100.00) dollars nor more than five hundred (\$500.00) dollars, or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. Any violation of the provisions of this act by any licensee shall subject such licensee upon conviction to a revocation of his or its license and said licensee shall be ineligible to apply for or receive a slot machine license for a period of one (1) year after such revocation.

History: En. Sec. 10, Ch. 142, L. 1945.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

CHAPTER 37

LICENSES—TRANSIENT RETAIL MERCHANTS

Section 84-3701. Transient retail merchants' license—persons liable—definition of "temporary premises."

84-3702. Amount of license.

84-3703. Application for license.

84-3704. Provision for bond instead of license.

84-3705. Issuance of license—filing of application—endorsement.

84-3706. Requirement of posting license in place of business—penalty for failure.

84-3707. Punishment for doing business without license.

84-3708. Interpretation of provisions of law.

84-3701. (2429.1) Transient retail merchants' license—persons liable—definition of "temporary premises." Every person, firm or corporation acting for himself or itself, or representing any other person, firm or corporation who or which brings into temporary premises, into any county of this state, a stock of goods, wares or articles of merchandise, or notions, or other articles of trade, and who or which solicits, sells or offers to sell, or exhibit for sale, such stock of goods, wares or articles of merchandise or notions or other articles of trade at retail, is within the meaning of this act, a transient retail merchant, and such definition shall continue to apply until such person, firm or corporation shall be continuously engaged at such particular place in the county for a period of one year.

"Temporary premises" within the meaning of this act shall be continued to include any hotel, rooming-house, store room, building or any part of any building whatsoever, tent, vacant lot, freight station, railroad car, or any public or quasi-public place, temporarily occupied for such business.

History: En. Sec. 1, Ch. 182, L. 1925.

40 Am. Jur. 938, Peddlers, Transient Dealers, and Solicitors, §§ 30 et seq.

Licenses—15(2).

37 C.J. Licenses § 80.

Who may be classed as "itinerant vendor," "transient merchant" or the like within license regulations. 94 ALR 1076.

84-3701
 Amended
 L. '51, c. 113
 Sec. 1, p. 195

84-3702. (2429.2) Amount of license. The amount to be paid for the license to conduct the business of a "transient retail merchant" shall be the sum of five dollars (\$5.00) for each week or fraction thereof, to be paid in advance to the county treasurer of the county in which such business is conducted.

History: En. Sec. 2, Ch. 182, L. 1925.

Licenses 29.

37 C.J. Licenses § 116.

84-3703. (2429.3) Application for license. Every transient retail merchant desiring to do business in any county of this state, must before commencing such business, file with the county treasurer of such county, on a form to be provided by such treasurer, an application in writing subscribed and sworn to by such applicant before an officer in this state authorized to take oaths which application shall set forth:

1. Name of applicant.
2. His place of permanent residence.
3. His local headquarters, if any.
4. Time of his arrival in the county.
5. County from which last license, if any, received.
6. Whether acting as principal, agent, or employee.
7. If acting as agent or employee, the name and place of business of his principal or employer.
8. If an agent, as part of application, principal's acknowledgment of such agency must accompany application.
9. Brief descriptive list of articles to be offered for sale, or services to be performed.
10. Whether payments or deposits of money are collected when orders are taken, or in advance of final delivery.
11. The number of weeks for which license is requested.

At the time of filing the application, such transient retail merchant must accompany the application above provided with the sum specified in the preceding section as a license fee except as provided in the following section.

History: En. Sec. 3, Ch. 182, L. 1925.

Licenses 22.

37 C.J. Licenses § 98.

84-3704. (2429.4) Provision for bond instead of license. In lieu of the license fee prescribed in section 84-3702, every transient retail merchant who filed with the application required in section 84-3703 an affidavit indicating bona fide intention to become a permanent merchant and continue in business for a period longer than one year, shall upon filing and approval of the bond herein provided for, receive from the county treasurer a license permitting the conduct of such business for a period of one year. Such bond shall be a surety bond in the penal sum of one thousand dollars (\$1,000.00) to said county treasurer executed by a surety company licensed to do business in this state or by two responsible freeholders residing in the county and whose names appear upon the assessment roll of said county (or in lieu thereof a cash bond of equal amount) and to be approved by said county treasurer conditioned upon the performance of the intention to become a permanent merchant and continue in business for a period longer than one year and to insure the payment of license fees for the

period such business is actually conducted, if not in fact a bona fide permanent business, and further conditioned, upon the delivery of goods ordered or sold in accordance with the terms of such order or sale. Any person aggrieved by any action or misrepresentation of any such transient retail merchant shall have a right of action on said bond for the recovery of his money advanced or damage, and costs. Such bond shall remain in full force and effect for a period of six months after the expiration of the one-year period.

History: En. Sec. 4, Ch. 182, L. 1925.

Licenses↔26.

37 C.J. Licenses §§ 95, 164.

84-3705. (2429.5) Issuance of license—filing of application—endorsement. Upon filing of the application prescribed in section 84-3703, and the payment of the fee prescribed in section 84-3702, the county treasurer shall issue and deliver to the applicant, in the county a license to carry on the business described in such application in the county in which such license is so issued, for the period for which such license is requested.

Upon filing of the application prescribed in section 84-3703, and the bond prescribed in section 84-3704, the county treasurer shall issue and deliver to the applicant a license to carry on the business described in such application in the county which such license is so issued, for a period of one year from the date of such license.

Such licenses shall be non-transferable and shall have printed across the face thereof in bold type the words "Not Transferable."

The county treasurer shall endorse upon each application the date of issuance of the license and the duration thereof and shall immediately file such application with the county clerk and recorder of his county, who shall file the same in his office and keep an appropriate index thereof, which shall show the date filed, the name of applicant, and an appropriate reference to the file number by which said application may be found.

History: En. Sec. 5, Ch. 182, L. 1925.

Licenses↔22, 37.

37 C.J. Licenses §§ 98-107.

84-3706. (2429.6) Requirement of posting license in place of business—penalty for failure. Every transient retail merchant doing business under the provisions of this act shall at all times keep said license conspicuously posted in said place of business, and any such transient retail merchant who shall fail to post and keep posted his license as above provided is guilty of a misdemeanor and shall be fined not less than ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00) for each offense.

History: En. Sec. 6, Ch. 182, L. 1925.

Licenses↔40.

37 C.J. Licenses §§ 151 et seq., 172.

84-3707. (2429.7) Punishment for doing business without license. Every transient retail merchant as herein defined, doing business without first obtaining a license so required by this act is guilty of a misdemeanor, and shall be punished accordingly.

History: En. Sec. 7, Ch. 182, L. 1925.

Cross-Reference

Carrying on business without license, penalty, sec. 94-1511.

84-3708. (2429.8) Interpretation of provisions of law. Nothing in this act contained, is intended to operate so as to interfere with the power of

the United States to regulate commerce between the states as such power is defined by the supreme court of the United States. Nothing in this act contained is intended to operate so as to impair or abridge, or interfere with, the right of any incorporated municipality within this state, to enact local laws or ordinances dealing with the subject of this act, nor shall the provisions of this act apply to duly constituted "city markets" operated by authority of any city or town.

History: En. Sec. 8, Ch. 182, L. 1925.

CHAPTER 38

LEVY OF TAXES

Section	84-3801.	The levy.
	84-3802.	Tax levies to be made in mills and tenths and hundredths of mills.
	84-3803.	Rate of taxation fixed by state board.
	84-3804.	Increase of state tax levy—support units of university.
	84-3805.	Rate of county fixed by board of county commissioners.
	84-3806.	Failure of county commissioners to levy.
	84-3807.	Tax operates as a judgment or lien.
	84-3808.	Tax on personal property lien on realty—separate assessment.
	84-3809.	Tax upon real property and tax on improvements a lien upon both.
	84-3810.	Tax for school purposes.

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(2147 et seq
RCM '35)
207 P.(2d) 555

84-3801. (2147) The levy. There must be levied at each session of the legislative assembly, upon all property in the state liable to taxation, a sufficient sum to realize the amount necessary to meet the appropriations made for the two succeeding fiscal years, and for the payment of deficiencies, if any have occurred in the previous fiscal year or years. Such levy must be made for each fiscal year separately, and must not exceed two and one-half mills on each dollar of valuation. The fiscal year commences on the first day of July.

History: En. Sec. 80, p. 104, L. 1891; amd. Sec. 3820, Pol. C. 1895; re-en. Sec. 2593, Rev. C. 1907; re-en. Sec. 2147, R. C. M. 1921.

Cross-Reference

Hail insurance, levy for, sec. 82-1506.

Operation and Effect

The sum of the corrected assessments of the several counties, with the additions made by the state board of equalization, is the basis for taxation for state purposes at the rate fixed biennially by the legis-

lature. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Northern Pac. Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Taxation—298.

61 C.J. Taxation § 675 et seq.

51 Am. Jur. 614, Taxation, §§ 647 et seq.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.

84-3802. (2148.1) Tax levies to be made in mills and tenths and hundredths of mills. Every board of county commissioners, city or town council or commission, and every other board or commission, authorized by law to make or fix tax levies for any purpose, shall make and fix every such levy in mills, and tenths and hundredths of mills.

History: En. Sec. 1, Ch. 123, L. 1935.

Taxation—301(1).

61 C.J. Taxation § 687.

84-3803. (2149) Rate of taxation fixed by state board. The state board of equalization must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each one hundred dollars of taxable property of the

state, after allowing twelve per cent. for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the legislative assembly for each fiscal year.

History: En. Sec. 3824, Pol. C. 1895; re-en. Sec. 2597, Rev. C. 1907; re-en. Sec. 2149, R. C. M. 1921. Cal. Pol. C. Sec. 3713.

Herrin v. Erickson et al., 90 M 259, 273, 281, 2 P 2d 296.

Quaere as to Constitutionality

Is this section conferring authority upon the state board of equalization to fix for state purposes each year, an ad valorem rate of taxation sufficient to meet the levy made by the legislative assembly for each fiscal year, a valid enactment?

References

Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Northern Pac. Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Taxation—305.

61 C.J. Taxation § 694 et seq.

84-3804. Increase of state tax levy—support units of university. That the rate of taxation on real and personal property for state purposes, as is hereafter defined, for each year for a period of ten (10) years beginning with the year 1941, shall be increased three and one-half ($3\frac{1}{2}$) mills on each dollar of taxable valuation, in addition to the levy which is now or may hereafter be authorized by Section 9 of Article 12 of the Constitution of the state of Montana, and the legislative assembly is authorized and empowered to levy an additional tax for state purposes for each of said years of not exceeding three and one-half ($3\frac{1}{2}$) mills on each dollar of taxable valuation for state purposes, and all money derived from said additional levy of three and one-half ($3\frac{1}{2}$) mills for each of said years or so much thereof as may be necessary shall be appropriated by the legislative assembly for the support, maintenance and improvement of the State University at Missoula, the State College of Agriculture and Mechanic Arts at Bozeman, the Montana State School of Mines at Butte, the Montana State Normal College at Dillon, the Eastern Montana State Normal School at Billings, and the Northern Montana Agricultural and Manual Training School at Fort Assinniboine, now comprised in the University of Montana, together with the agricultural experiment station and its branches and sub-stations, and the agricultural extension service, including the soil survey and the grain laboratory.

History: En. Sec. 1, Ch. 143, L. 1939. Referendum No. 42, approved at election Nov. 5, 1940, effective under Governor's proclamation, No. 28, 1940.

NOTE.—An act increasing the levy from $3\frac{1}{2}$ mills to 6 mills beginning with the year 1949 was referred to the people and voted on at the election of November, 1948. Ch. 217, L. 1947.

84-3805. (2150) Rate of county fixed by board of county commissioners. The board of county commissioners of each county must, on the second Monday in August, fix the rate of county taxes and designate the number of mills on each dollar of valuation of property for each fund, and must levy taxes upon the taxable property of the county.

History: En. Sec. 81, p. 104, L. 1891; re-en. Sec. 3825, Pol. C. 1895; re-en. Sec. 2598, Rev. C. 1907; re-en. Sec. 2150, R. C. M. 1921. Cal. Pol. C. Sec. 3714.

NOTE.—This section held impliedly repealed by ch. 165, l. 1941 and ch. 23, l. 1943, amending section 71-106 (4465.4) insofar as section 84-3805 applied to the time of levying of poll tax. Opinions of Attorney General No. 112, Vol. 19.

Cross-References

Airports, sec. 1-804.
Bridge tax levy, secs. 32-702 to 32-708.
County bonds, levy to pay, sec. 16-2039.
County commissioners, tax levy by, secs. 16-1004, 16-1015.
County fairs, tax levy, secs. 16-1406, 16-1412.
County floating indebtedness, levy to pay, secs. 16-2017, 16-2019.

County free library, levy, sec. 44-206.
Gopher destruction, levy for, sec. 16-1152.

Health units, levy for, sec. 69-812.
Poor, tax levy for, sec. 71-106.
Protection of sheep from predatory animals, levy for, sec. 46-2102.
Purebred livestock shows, levy for, sec. 46-2201.

Road and bridge construction levies, secs. 16-2201 to 16-2204, 32-205 to 32-208.

Road tax levy, sec. 32-201.
Rural improvement districts, levy, secs. 16-1615 to 16-1624.

School purposes, levy for, sec. 84-3810.

Operation and Effect

Board of county commissioners, at the conclusion of its sitting, must fix the rate of taxation for the year. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 271 P 61; Northern Pac. Ry. Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

84-3806. (2151) Failure of county commissioners to levy. The action of the state board of equalization in fixing the rate of taxation for state purposes is, in the absence of action by the board of county commissioners, a valid levy of the rate so fixed, and imposes upon the county commissioners, and all other officers charged with the performance of any duties under the revenue law, the same obligations as if the board of county commissioners had made the levy at the proper time.

History: En. Sec. 3826, Pol. C. 1895; re-en. Sec. 2599, Rev. C. 1907; re-en. Sec. 2151, R. C. M. 1921. Cal. Pol. C. Sec. 3715.

Taxation—300.

61 C.J. Taxation § 686.

51 Am. Jur., Taxation, p. 830, §§ 943 et seq.; p. 881, §§ 1010 et seq.

Right to maintain action or proceeding in one state to collect or enforce tax due to another state or political subdivision thereof. 65 ALR 1360.

When statute of limitation commences to run against action to recover tax. 131 ALR 822.

Sale of property at tax sale for more or less than the amount of taxes, penalties, and costs as affecting its validity. 147 ALR 1141.

Books or records of title abstracts as subject of property taxes. 149 ALR 1038.

Enforcement against tax-exempt property of tax on non-exempt property or on owner of tax-exempt property. 159 ALR 461.

Priority between tax or assessment lien and mortgage or other non-tax lien held by state or municipality. 159 ALR 832.

84-3807. (2152) Tax operates as a judgment or lien. Every tax has the effect of a judgment against the person, and every lien created by this title has the force and effect of an execution duly levied against all personal property of the delinquent. The judgment is not satisfied nor the lien removed until the taxes are paid or the property sold for the payment thereof.

History: En. Sec. 82, p. 104, L. 1891; re-en. Sec. 3827, Pol. C. 1895; re-en. Sec. 2600, Rev. C. 1907; re-en. Sec. 2152, R. C. M. 1921. Cal. Pol. C. Sec. 3716.

NOTE.—The title referred to in the above section embraced the entire taxation laws contained in the revised codes of 1907.

Application to Special Taxes or Assessment

The provision of this section that every tax has the effect of a judgment applies only to general taxes, not special taxes. State v. Nicholson, 74 M 346, 350 et seq., 240 P 837.

See, also, State v. Jeffries, 83 M 111, 118, 270 P 638 to the same effect.

Operation and Effect

The fee required of a foreign corporation by section 25-102 is not a property tax, creating a lien on the property until paid. State ex rel. General Electric Co. v. Alderson, 49 M 29, 33, 140 P 82.

Taxes on Realty not Collectable by Court Action

Taxes on realty cannot be collected by an action for that purpose, nor can the tax lien be foreclosed, not only because the legislature has provided no such remedy, but also because this section provides that the tax has the effect of a personal judgment and levy of execution upon all personal property of the delinquent which is not satisfied until the tax

is paid or the property is sold for payment of the tax. *State ex rel. Tillman v. District Court et al.*, 101 M 176, 182, 53 P 2d 107.

Where Mortgagee Became Subrogee by Payment, Entitled to Reimbursement Before Title Quieted

Where a mortgagor who had not paid any of the principal or interest and mortgagee allowed lien to outlaw but paid the taxes on the land to prevent delinquency, held, that when the mortgagee paid the taxes, he became subrogee of the county and state as to the lien against the land, and acquired all the rights of the county and state except the rights to impose penalties for delinquency, and was entitled to reimbursement for the taxes before the

court would quiet title to the land in mortgagor. *Theory of equitable subrogation. Swingley v. Riechoff*, 112 M 59, 68, 112 P 2d 1075.

References

Cited or applied as section 3827, political code, in *State ex rel. City of Butte v. Johnson*, 16 M 570, 573, 41 P 706; *Sanderson v. Bateman*, 78 M 235, 252, 253 P 1100; *State ex rel. Federal Land Bk. v. Hays*, 86 M 58, 67, 282 P 32; *State et al. v. Board of Commissioners et al.*, 89 M 37, 94, 296 P 1; *Calkins v. Smith*, 106 M 453, 457, 78 P 2d 74.

Taxation—501.

61 C.J. Taxation § 1155 et seq.

51 Am. Jur. 881, Taxation, §§ 1010 et seq.

84-3808. (2153) Tax on personal property lien on realty—separate assessment. (a). Every tax due upon personal property is a prior lien upon any or all of such property, which lien shall have precedence over any other lien, claim or demand upon such property, and except as hereinafter provided, every tax upon personal property is also a lien upon the real property of the owner thereof, from and after 12 M. of the first Monday in March in each year.

(b). The taxes upon personal property based upon a taxable value up to and including one thousand dollars (\$1000.00) shall be a first and prior lien upon the real property of the owner of such personal property; taxes upon personal property based upon the taxable value thereof in excess of one thousand dollars (\$1000.00) shall be a first and prior lien upon the real property of the owner unless the owner or holder of any mortgage or other lien upon said real property appearing of record in the office of the clerk and ex officio recorder of the county where such real property is situated at or before the time such personal property tax attached thereto shall have filed the notice hereinafter provided for, in which event the taxes upon such excess of one thousand dollars (\$1000.00), of taxable value shall not be a lien on the real property of such owner. It shall be the duty of the county treasurer to issue to any mortgagee or lien holder, upon his request, a statement of the personal property tax due upon the taxable value up to and including one thousand dollars (\$1,000.00); and personal property taxes upon a taxable value up to one thousand dollars (\$1000.00) may be paid, redeemed from a tax sale as by law provided, or discharged separate from any personal property taxes in excess of such amount. Payment of such taxes upon a taxable value up to one thousand dollars (\$1000.00) as herein provided, shall operate to discharge the tax lien upon the personal property of the owner to the extent of such payment in the order that the person paying such tax shall direct.

(c). The holder of any mortgage or lien upon real property who desires to obtain the benefits of this section shall file in the office of the county assessor and in the office of the county treasurer of said county a notice giving;

(1) the name and address of the mortgagee and holder of the mortgage or lien;

(2) the name of the reputed owner of the land;
 (3) the description of the land;
 (4) the date of record and expiration of the mortgage or lien;
 (5) the amount thereof; and
 (6) a statement that he claims the benefit of the provisions of this section; and such notice shall be ineffectual as to any taxes which shall have become a lien on real property prior to the filing of such notice as aforesaid. If the mortgage be not paid at maturity, such notice shall thereafter be filed annually, unless the mortgage be extended for a definite period to be stated in such notice.

(d). Provided, that any owner of a mortgage on real estate upon which personal property taxes are by this act made a lien, and where the owner of such real estate and personal property has failed to pay taxes due upon such real estate and personal property for one or more years, may file with the county assessor of the county in which such property is located a written request to have the personal property and real estate of the owner separately assessed. Such request must be made by registered mail at least ten (10) days prior to the first Monday in March in the year for which property is assessed. Upon receipt by the assessor of such request, it is hereby made the duty of the county assessor to make a separate assessment of real and personal property of the owner thereof and such personal taxes shall not be a lien upon the real estate so mortgaged of the owner thereof and the said personal property taxes shall be collected in the manner provided by law for other personal property.

History: En. Sec. 3828, Pol. C. 1895; re-en. Sec. 2601, Rev. C. 1907; re-en. Sec. 2153, R. C. M. 1921; amd. Sec. 1, Ch. 18, L. 1925; amd. Sec. 1, Ch. 113, L. 1927; amd. Sec. 1, Ch. 182, L. 1933; amd. Sec. 1, Ch. 119, L. 1935; amd. Sec. 1, Ch. 97, L. 1937. Cal. Pol. C. Sec. 3717.

References

Cited or applied as section 3828, polit-

ical code, in *Walsh v. Croft*, 27 M 407, 408, 71 P 409; *Hayes v. Smith*, 58 M 306, 312, 192 P 615; *County of Hill v. County of Liberty*, 62 M 15, 20, 203 P 500; *State ex rel. Sadler v. Evans*, 106 M 286, 293, 77 P 2d 394.

Taxation 507, 509.

61 C.J. Taxation § 1162 et seq.

51 Am. Jur. 883, Taxation, § 1011.

84-3809. (2154) Tax upon real property and tax on improvements a lien upon both. Every tax due upon real property is a lien against the property assessed; and every tax due upon improvements upon real estate assessed to others than the owner of the real estate is a lien upon the land and improvements; which several liens attach as of the first Monday of March in each year.

History: Ap. p. Sec. 1714, 5th Div. Comp. Stat. 1887; amd. Sec. 83, p. 105, L. 1891; amd. Sec. 3829, Pol. C. 1895; re-en. Sec. 2602, Rev. C. 1907; re-en. Sec. 2154, R. C. M. 1021. Cal. Pol. C. Sec. 3718.

Lien of Taxes — Action for Collection

Taxes on real property cannot be collected by an action, either at law or in equity, in the absence of statute so providing, such action being rendered unnecessary by the provisions of this section making taxes a lien akin to a judgment against the

property. *State ex rel. Tillman v. District Court*, 101 M 176, 183, 53 P 2d 107.

References

Cited or applied as section 3829, political code, in *State ex rel. City of Butte v. Johnson*, 16 M 570, 573, 41 P 706; *Walsh v. Croft*, 27 M 407, 408, 71 P 409; *County of Hill v. County of Liberty*, 62 M 15, 20, 203 P 500; *State v. Jefferies*, 83 M 111, 116, 270 P 638; *Calkins v. Smith*, 106 M 453, 457, 78 P 2d 74; *Calvin v. Custer County*, 111 M 162, 166, 107 P 2d 134; *Swingley v. Riechoff*, 112 M 59, 68, 112 P 2d 1075.

84-3810. (2155) Tax for school purposes. There must be levied by the legislative assembly, at the time other state taxes are levied, a tax of such number of cents of each one hundred dollars value of taxable property in the state as will produce a net sum equal to the amount reported to them by the state auditor, or as may be otherwise ascertained as being necessary to be raised, by an ad valorem tax for school purposes; and the assessment and collection of said tax must be performed in the same manner and at the same time as the other state taxes are assessed and collected.

History: En. Sec. 84, p. 105, L. 1891; re-en. Sec. 3830, Pol. C. 1895; re-en. Sec. 2603, Rev. C. 1907; re-en. Sec. 2155, R. C. M. 1921. Cal. Pol. C. Sec. 3719.

School district budgets, levy for, sec. 75-1723.

Schools, special levy, sec. 75-3707.

School transportation, levy for, sec. 75-3414.

Cross-References

Common school millage tax levy, secs. 75-3706, 75-3707, 75-3801.

Emergency county high school warrants, levy to pay, sec. 75-4525.

Emergency school district warrants, levy for, sec. 75-1720.

Free textbooks, levy for, sec. 75-3502.

High schools, tax levy, secs. 75-4508, 75-4516, 75-4528.

Joint school districts, levy, sec. 75-1817.

New school district created, levy for payment of warrants, sec. 75-1812.

School bonds, levy for, secs. 75-3926, 75-3927.

References

Northern Pacific Railway Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Schools and School Districts—99.

56 C.J. Schools and School Districts § 750 et seq.

47 Am. Jur. 352, Schools, §§ 76 et seq.

Validity of legislative delegation of taxing power to school districts in absence of express constitutional provision authorizing such delegation. 113 ALR 1416.

CHAPTER 39

UNIFORM FEDERAL TAX LIEN REGISTRATION ACT

- Section 84-3901. Notice and discharge of federal liens—filing—fee not to be charged.
 84-3902. Federal tax lien index.
 84-3903. Entering discharge in index.
 84-3904. Index and files—how furnished.
 84-3905. Purpose of act.
 84-3906. Interpretation of act.
 84-3907. Citation of act.

84-3901. (2155.1) Notice and discharge of federal liens—filing—fee not to be charged. Notices of liens for taxes payable to the United States of America and certificates discharging such liens shall be filed in the office of the county clerk of the county or counties in this state, within which the property subject to such lien is situated. No fee shall be charged for such filing.

History: En. Sec. 1, Ch. 8, L. 1927.

NOTE.—Uniform state law.

Sections 84-3901 through 84-3907 are, with minor differences, enactments of sections 1 through 7 of the "Uniform Federal Tax Lien Registration Act" approved by the National Conference of Commissioners on Uniform State Laws in 1926,

and adopted in the states of Arkansas, Delaware, Idaho, Indiana, Kentucky, Louisiana, Maryland, Nevada, New Mexico, New York, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Utah, Wisconsin and Wyoming and also in Alaska and Hawaii.

84-3902. (2155.2) Federal tax lien index. When a notice of such lien is filed, the county clerk shall forthwith enter the same in an alphabetical federal tax lien index, showing on one line the name and residence of the

taxpayer named in such notice, the collector's serial number of such notice, the date and hour of filing, and the amount of tax with the interest and penalties; he shall file and keep all original notices so filed in numerical order in a file or files and designated, federal tax lien notices.

History: En. Sec. 2, Ch. 8, L. 1927.

84-3903. (2155.3) Entering discharge in index. When a certificate of discharge of any tax lien issued by the collector of internal revenue or other proper officer, is filed in the office of the county clerk, where the original notice of lien is filed, said county clerk shall enter the same with date of filing in said federal tax lien index, on the line where notice of the lien so discharged is entered, and permanently attach the original certificate of discharge to the original notice of lien.

History: En. Sec. 3, Ch. 8, L. 1927.

Internal Revenue \S 1725.

47 C.J.S. Internal Revenue \S 767.

84-3904. (2155.4) Index and files—how furnished. Said federal tax lien index and file or files for said federal tax lien notices shall be furnished to the county clerk of each county in this state, in the manner now provided by law for the furnishing of books in which deeds are recorded.

History: En. Sec. 4, Ch. 8, L. 1927.

Internal Revenue \S 1716.

47 C.J.S. Internal Revenue \S 761.

84-3905. (2155.5) Purpose of act. This act is passed for the purpose of authorizing the filing of notices of liens in accordance with the provisions of section 3186 of the revised statutes of the United States, as amended by the act of March 4, 1913, 37 statutes at large, page 1016, and any acts or parts of acts amendatory thereof.

History: En. Sec. 5, Ch. 8, L. 1927.

84-3906. (2155.6) Interpretation of act. This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: En. Sec. 6, Ch. 8, L. 1927.

Internal Revenue \S 1712.

47 C.J.S. Internal Revenue \S 758.

84-3907. (2155.7) Citation of act. This act may be cited as the Uniform Federal Tax Lien Registration Act.

History: En. Sec. 7, Ch. 8, L. 1927.

CHAPTER 40

COUNTY ASSESSOR AND COUNTY CLERK—DUTIES IN RELATION TO COMPUTATION AND ENTRY OF TAXES

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| Section | 84-4001. | Assessor to enter valuations on assessment book. |
| | 84-4002. | County clerk to prepare duplicate statement. |
| | 84-4003. | Statement to be transmitted to state auditor and state board of equalization. |
| | 84-4004. | To follow directions of state board of equalization. |
| | 84-4005. | Assessor to compute and enter taxes—affidavit. |
| | 84-4006. | County clerk's affidavit—delivery of book to assessor. |
| | 84-4007. | Charging treasurer with taxes—delivery of assessment book to treasurer. |
| | 84-4008. | County clerk to verify statements made by him. |
| | 84-4009. | Transfer of assessment book from one treasurer to another—charging taxes. |

- 84-4010. Collection of poll tax.
- 84-4011. Penalty for neglect of duty.
- 84-4012. County commissioners may dispense with duplicate book.
- 84-4013. State board may dispense with duplicate.

84-4001. (2156) Assessor to enter valuations on assessment book. Before delivering the assessment book to the county clerk as required by section 84-505 the assessor must proceed to add up the valuations, and enter the total valuation of each kind of property, and the total valuation of all property, on the assessment book. The column of acres must show the total acreage of the county.

History: En. Sec. 85, p. 105, L. 1891; re-en. Sec. 3840, Pol. C. 1895; re-en. Sec. 2604, Rev. C. 1907; re-en. Sec. 2156, R. C. M. 1921; amd. Sec. 1, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3727.

Operation and Effect

When the assessments have been equalized and the necessary changes made, the clerk must sum up the values of the different kinds of property assessed to each owner, and also the gross amount of all

assessments as fixed by the equalizations. State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

Cited or applied as section 3840, political code, in State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

Taxation—411.

61 C.J. Taxation § 866 et seq.

84-4002. (2157) County clerk to prepare duplicate statement. The county clerk must, on or before the second Monday in August of each year, prepare from the assessment-book of such year, as corrected by the board of county commissioners, duplicate statements, showing in separate columns:

1. The total value of all property;
2. The value of real estate, including mining claims, stated separately;
3. The value of the improvements thereon;
4. The value of personal property, exclusive of money;
5. The amount of money;
6. The number of acres of land, and the number of mining claims, stated separately.

History: En. Sec. 86, p. 105, L. 1891; re-en. Sec. 3841, Pol. C. 1895; re-en. Sec. 2605, Rev. C. 1907; re-en. Sec. 2157, R. C. M. 1921. Cal. Pol. C. Sec. 3728.

References

Cited or applied as section 3841, polit-

ical code, in State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415; as section 2605, revised codes in State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

Taxation—436.

61 C.J. Taxation § 915 et seq.

84-4003. (2158) Statement to be transmitted to state auditor and state board of equalization. The county clerk must, as soon as such statements are prepared, transmit by mail, one to the state auditor and one to the state board of equalization.

History: En. Sec. 87, p. 105, L. 1891; re-en. Sec. 3842, Pol. C. 1895; re-en. Sec. 2606, Rev. C. 1907; re-en. Sec. 2158, R. C. M. 1921. Cal. Pol. C. Sec. 3729.

Operation and Effect

It is the duty of the county clerk to ascertain the gross sum of all assessments and transmit it to the state auditor and the state board of equalization. State ex

rel. Fadness v. Eie, 53 M 138, 147, 162 P 164.

References

Referred to as section 3842 of the political code, in State ex rel. Board of Equalization v. Fortune, 24 M 154, 155, 60 P 1086; State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

84-4004. (2159) To follow directions of state board of equalization. As soon as the county clerk receives from the state board of equalization a

statement of any change or changes made by the board in the assessment books of the county, or in any assessment therein contained, he must make the corresponding change or changes in the assessment books, by entering the same in a column provided with a proper heading in the assessment books, counting any fractional sum, when more than fifty cents as one dollar, and omitting it when less than fifty cents, so that the value of any separate assessment shall contain no fractions of a dollar; but he must in all cases disregard any action of the board of county commissioners which is prohibited by section 84-413; provided, however, that if such assessment books are not in the possession of the county clerk at the time he receives any such statement, he must immediately make a copy thereof, attesting the same with his seal of office, and deliver such attested copy to the county officer then having possession of such assessment books, and it shall be the duty of such county officer to immediately make the corresponding change or changes in such assessment in the manner herein provided.

History: En. Sec. 88, p. 106, L. 1891; re-en. Sec. 3843, Pol. C. 1895; re-en. Sec. 2607, Rev. C. 1907; re-en. Sec. 2159, R. C. M. 1921; amd. Sec. 1, Ch. 86, L. 1929. Cal. Pol. C. Sec. 3730.

Operation and Effect

When the necessary corrections and additions have been made to it under the direction of the state and county boards of equalization, the clerk must complete the assessment book by extending the tax so that the amount to be paid by each taxpayer for the year will be made to appear. State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

References

Cited or applied as section 2607, revised codes, in State ex rel. Fadness v. Eie, 53 M 138, 147, 162 P 164; Anderson v. McClenathan, 62 M 387, 391, 205 P 230; Butte Electric Ry. Co. v. McIntyre, 71 M 21, 23, 227 P 61; Morse v. Kroger et al., 87 M 54, 58, 285 P 185; State ex rel. State Board of Equalization v. Jacobson, 107 M 461, 463, 86 P 2d 9.

Taxation \Rightarrow 438.

61 C.J. Taxation § 991 et seq.

84-4005. (2160) Assessor to compute and enter taxes—affidavit. The county assessor must then compute, and enter in a separate money column in the assessment book, the respective sums in dollars and cents, rejecting the fractions of a cent, to be paid as a tax on the property therein enumerated, and foot up the columns showing the total amount of such taxes, and the columns of total value of property in the county, as corrected under the direction of the county and state board of equalization, and shall attach thereto his affidavit, by him subscribed as follows:

"I, _____, county assessor of the county of _____, do swear that I have reckoned the respective sums due as taxes, and have added up the columns of valuations, taxes and acreage, as required by law, and the said assessment book to which this affidavit is affixed is full, true and correct, and made in the manner prescribed by law," and shall on or before the second Monday of October deliver the completed assessment book to the county clerk.

History: En. Sec. 89, p. 106, L. 1891; re-en. Sec. 3844, Pol. C. 1895; re-en. Sec. 2608, Rev. C. 1907; re-en. Sec. 2160, R. C. M. 1921; amd. Sec. 3, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3731.

Operation and Effect

After the necessary changes have been made and the assessments equalized, it is the duty of the clerk to calculate and extend to the proper column the amount

due from each taxpayer for the year, at the combined rates fixed by the county board and the legislature. *State ex rel. Fadness v. Eie*, 53 M 138, 147, 162 P 164.

References

Anderson v. McClenathan, 62 M 387,

391, 205 P 230; *Butte Electric Ry. Co. v. McIntyre*, 71 M 21, 23, 227 P 61; *Morse v. Kroger et al.*, 87 M 54, 58, 285 P 185.

Taxation Ⓒ430.

61 C.J. *Taxation* § 889.

84-4006. (2161) **County clerk's affidavit—delivery of book to assessor.** That within five (5) days after the second Monday in August the county clerk must attach to the book the following affidavit:

"I, _____, county clerk of the county of _____, do swear that I received the assessment book of the taxable property of the county from the county assessor with his affidavit thereto affixed, and that I have corrected it and made it conform to the requirements of the county and state board of equalization," and deliver the book to the county assessor.

History: En. Sec. 90, p. 106, L. 1891; re-en. Sec. 3845, Pol. C. 1895; re-en. Sec. 2609, Rev. C. 1907; re-en. Sec. 2161, R. C. M. 1921; amd. Sec. 9, Ch. 96, L. 1923; amd. Sec. 2, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3732.

Operation and Effect

The affidavit must cover all the facts showing that the county clerk has done his duty in taking the basis furnished by the assessor in entering the authorized corrections and extensions, and in making the copy furnished by him such as is required by law. *State ex rel. City of Butte v. Weston*, 29 M 125, 132, 74 P 415.

The limit of time during which the annual roll must be completed is provided for by this section. *Carlson v. City of Helena*, 39 M 82, 103, 102 P 39.

References

Anderson v. McClenathan, 62 M 387, 391, 205 P 230; *Garry v. Martin*, 70 M 587, 590, 227 P 573; *Butte Electric Ry. Co. v. McIntyre*, 71 M 21, 23, 227 P 61; *Sanderson v. Bateman*, 78 M 235, 246, 253 P 1100.

Taxation Ⓒ553.

61 C.J. *Taxation* § 1307.

84-4007. (2163) **Charging treasurer with taxes—delivery of assessment book to treasurer.** On or before the third Monday of October the county clerk must charge the treasurer with the full amount of taxes levied and deliver the original assessment book to the county treasurer.

History: En. Sec. 92, p. 106, L. 1895; re-en. Sec. 3847, Pol. C. 1895; re-en. Sec. 2611, Rev. C. 1907; re-en. Sec. 2163, R. C. M. 1921; amd. Sec. 10, Ch. 96, L. 1923; amd. Sec. 4, Ch. 167, L. 1943. Cal. Pol. C. Sec. 3734.

References

Anderson v. McClenathan, 62 M 387, 391, 205 P 230.

84-4008. (2164) **County clerk to verify statements made by him.** The county clerk must verify, by his affidavit attached thereto, all statements made by him under the provisions of this code.

History: En. Sec. 93, p. 106, L. 1895; re-en. Sec. 3848, Pol. C. 1895; re-en. Sec. 2612, Rev. C. 1907; re-en. Sec. 2164, R. C. M. 1921. Cal. Pol. C. Sec. 3735.

References

Anderson v. McClenathan, 62 M 387, 391, 205 P 230.

Taxation Ⓒ433.

61 C.J. *Taxation* § 902 et seq.

84-4009. (2165) **Transfer of assessment book from one treasurer to another—charging taxes.** The county clerk, if the original assessment book or the delinquent tax list is transferred from one collector to another, must credit the one and charge the other with the amount then outstanding on the taxbook.

History: En. Sec. 94, p. 106, L. 1895; C. M. 1921; amd. Sec. 11, Ch. 96, L. 1923. re-en. Sec. 3849, Pol. C. 1895; re-en. Sec. Cal. Pol. C. Sec. 3736. 2613, Rev. C. 1907; re-en. Sec. 2165, R.

84-4010. (2165.1) Collection of poll tax. Whenever any special poll tax shall be imposed as provided by the laws of this state, whether for road, poor or any other purpose, it shall be the duty of the county clerk to have suitable receipts for the same printed and to deliver said receipts to the county treasurer charging him with the same and it shall be the duty of the county treasurer to proceed to collect such poll tax as provided by law. The receipts herein provided for shall be bound in book form and shall be printed and written in triplicate. One copy of such receipt shall be delivered to the person paying the tax, one copy of each and all receipts shall be turned over to the county clerk at the end of each month to be preserved in his office; and one copy of each and all such receipts shall be permanently preserved in the office of the treasurer.

History: En. Sec. 1, Ch. 81, L. 1923.

Militia men exempt from poll tax, sec. 11-2004.

Cross-References

Fire department members exempt from poll tax, sec. 11-2004.

Taxation 556.

61 C.J. Taxation § 1315.

84-4011. (2166) Penalty for neglect of duty. If the county clerk fails or neglects to perform the duties prescribed by sections 2584 and 2585 (section 84-708 of this code), he forfeits to the state five hundred dollars, to be recovered by action in the name of the state.

History: En. Sec. 95, p. 106, L. 1895; re-en. Sec. 3850, Pol. C. 1895; re-en. Sec. 2614, Rev. C. 1907; re-en. Sec. 2166, R. C. M. 1921.

lating to powers and duties of the state board of equalization and are in effect now superseded by section 84-708.

NOTE.—Sections 2584 and 2585, now repealed, were sections of the 1907 code re-

Taxation 564.

61 C.J. Taxation § 1327 et seq.

84-4012. (2167) County commissioners may dispense with duplicate book. The board of county commissioners of any county may, in its discretion, dispense with the making or use of any duplicate assessment book mentioned in any part of this code; and in all cases where said duplicate assessment book is referred to, it is lawful to use and consider the original assessment book in all the requirements of every part of this code referring to the same, and all affidavits or other statements in reference to said duplicate assessment book must be substantially worded to conform to the use of the original assessment book.

History: En. Sec. 3851, Pol. C. 1895; re-en. Sec. 2615, Rev. C. 1907; re-en. Sec. 2167, R. C. M. 1921.

Operation and Effect

This section has no application to the duplicate required for the use of city treasurers; it refers to the duplicate nec-

essary for county uses only. The fact that the county commissioners have dispensed with such duplicate assessment book does not prevent the county clerk from furnishing a duplicate for a city, though the original is to be used by the county treasurer. State ex rel. City of Butte v. Weston, 29 M 125, 130, 74 P 415.

84-4013. (2168) State board may dispense with duplicate. The state board of equalization may, by an order entered upon its minutes and certified to the county clerk of any county in the state, dispense with the duplicate assessment book in such county, in which event the original

assessment book must perform all the offices of such duplicate, and must have like force and effect.

History: En. Sec. 4019, Pol. C. 1895;
re-en. Sec. 2737, Rev. C. 1907; re-en. Sec.
2168, R. C. M. 1921.

CHAPTER 41

COLLECTION OF GENERAL PROPERTY TAXES—TAX SALES— REDEMPTION—TAX DEEDS—SALE OF TAX DEED LANDS

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84-4101. (2169) Treasurer to publish notice of delinquency. Within ten (10) days after the receipt of the assessment book, the county treasurer must publish a notice specifying:

1. That one-half ($\frac{1}{2}$) of all taxes levied and assessed will be due and payable before five o'clock p. m. on the 30th day of November next thereafter, and that unless paid prior thereto the amount then due will be delinquent and will draw interest at the rate of two-thirds ($\frac{2}{3}$) of one per centum (1%) per month from and after such delinquency, and two per centum (2%) will be added to the amount thereof as a penalty and that one-half ($\frac{1}{2}$) of all taxes levied and assessed will be due and payable on or before five o'clock p. m. on the 31st day of May next thereafter, and that unless paid prior to said date said taxes will be delinquent and will draw interest at the rate of two-thirds ($\frac{2}{3}$) of one per centum (1%) per month from and after such delinquency, and two per centum (2%) will be added to the amount thereof as a penalty.

2. The time and place at which payment of taxes may be made: And he must send to the last known address of each taxpayer a postcard or other written notice, postage prepaid, showing the amount of taxes due the current year, and the amount due and delinquent for other years; but any failure to give either notice will not affect the legality of the tax.

History: Ap. p. Sec. 3860, Pol. C. 1895; amd. Sec. 1, p. 97, L. 1899; re-en. Sec. 2616, Rev. C. 1907; amd. Sec. 1, Ch. 15, L. 1917; re-en. Sec. 2169, R. C. M. 1921; amd. Sec. 2, Ch. 96, L. 1923; amd. Sec. 2, Ch. 67, L. 1931. Cal. Pol. C. Sec. 3746.

NOTE.—The penalty prescribed in this section has been changed to conform to sec. 1, ch. 30, Ex. L. 1933.

Failure to Notice Delinquencies Not Fatal to Certificate of Sale

Under this section, failure of county treasurer to notice taxpayer of amount of delinquent taxes due does not affect the legality of the tax, or warrant cancellation of a certificate of sale issued to the county. *Smith v. Blaine County*, 102 M 116, 119, 56 P 2d 179.

Mandatory and Exclusive Statutes

The procedure outlined by this section and those following, for the collection of property taxes and the enforcement of tax liens is mandatory and exclusive. *Calkins v. Smith*, 106 M 453, 457, 78 P 2d 74.

References

County of Hill v. County of Liberty, 62 M 15, 17, 203 P 500; *Thomas v. City of Missoula et al.*, 70 M 478, 483, 226 P 213; *Butte Electric Ry. Co. v. McIntyre*, 71 M 21, 23, 227 P 61; *Sanderson v. Bateman*, 78 M 235, 246, 253 P 1100; *Williams v. Harvey et al.*, 91 M 163, 6 P 2d 418; *State ex rel. Malott v. Cascade Co.*, 94 M 394, 411, 22 P 2d 811.

Taxation—516.

61 C.J. Taxation § 1225.

51 Am. Jur. 831, Taxation, § 944.

84-4102. (2169.1) Act not retroactive—computing penalties. It is specifically provided that the provisions of this act are not retroactive and shall apply only to tax levies made on assessments levied from and after the first Monday in March, 1931.

In computing all penalties and delinquencies on the sale of property for the nonpayment of taxes, or the acquisition of tax titles, any levies heretofore made shall be computed on the basis of the then existing laws, but levies made on assessments for 1931 and thereafter shall be computed on the basis provided in this act for their respective portions, and all acts and parts of acts in conflict herewith are amended in accordance with the provisions of this act.

History: En. Sec. 3, Ch. 67, L. 1931.

Taxation—836.

61 C.J. Taxation § 2105 et seq.

84-4103. (2169.2) Time for payment of taxes—penalty and interest. All taxes levied and assessed in the state of Montana, except special assess-

ments made for special improvements in towns and cities, shall be payable as follows: One-half ($\frac{1}{2}$) of the amount of such taxes shall be payable on or before five o'clock p. m. on the 30th day of November of each year, and one-half ($\frac{1}{2}$) on or before five o'clock p. m. on the 31st day of May of each year; provided that unless one-half ($\frac{1}{2}$) of such taxes are paid on or before five o'clock p. m. on the 30th day of November of each year, then such amount so payable shall become delinquent and shall draw interest at the rate of two-thirds ($\frac{2}{3}$) of one per centum (1%) per month from and after such delinquency until paid and two per centum (2%) shall be added to the amount thereof as a penalty. All taxes due and not paid on or before five o'clock p. m. on the 31st day of May of each year shall be delinquent and shall draw interest at the rate of two-thirds ($\frac{2}{3}$) of one per centum (1%) per month from and after such delinquency until paid and two per centum (2%) shall be added to the amount thereof as a penalty.

History: En. Sec. 1, Ch. 96, L. 1923; amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. 1933; Sec. 1(a) amd. Sec. 1, Ch. 1, Ex. L. 1933.

NOTE.—The penalty prescribed in this section has been changed to conform to sec. 1, ch. 30, Ex. L. 1933.

Cross-Reference

Obstruction of the collection of taxes, penalty, sec. 94-1505.

Applies to City Taxes

Held, that this section, providing for the semi-annual payment of "all taxes levied and assessed in the state," applies to city taxes as well as to county taxes. *Thomas v. City of Missoula et al.*, 70 M 478, 480 et seq., 226 P 213.

Constitutionality

Held, that the title to chapter 96, laws of 1923 (this section), "An act to fix the time and method of collecting taxes and interest thereon," sufficiently expresses the subject of the act—authorizing the semi-annual payment of taxes—to meet the requirements of section 23, article V, of the constitution. *Thomas v. City of Missoula et al.*, 70 M 478, 480 et seq., 226 P 213.

84-4104. (2169.3) **Special assessments for special improvements.** Special assessments, or installments of special assessments, made for special improvements in towns and cities, duly and regularly made and levied by resolution, according to law, shall be payable on or before five o'clock p. m. on the 30th day of November of each year, and in the event the same are not paid on or before said date, the same shall be subject to the same interest and penalty for non-payment as are or may hereafter be provided by the laws of the state of Montana for other delinquent taxes. The collection thereof shall be had and made as provided by section 11-2233, as the same is now in force or may be hereafter amended.

Interest

While the interest rate is one per cent per month, this section does not state or contemplate that interest shall only be computed in full months, treating each fractional part of a month as a whole. Certainly no one would claim that a note bearing "eight per cent per annum" would require the payment of a whole year's interest for each year, and each fractional part of a year. The interest under this section can only be charged until all delinquent taxes are paid. *Glacier County v. Halvorson Mercantile Co.*, 93 M 520, 523, 19 P 2d 648.

References

State v. McFarlan, 78 M 156, 160, 252 P 805; *Sanderson v. Bateman*, 78 M 235, 249, 253 P 1100; *School District v. City of Helena*, 87 M 300, 306, 287 P 164; *School District No. 12 v. Pondera Co.*, 89 M 342, 347, 297 P 498; *Williams v. Harvey et al.*, 91 M 168, 171, 6 P 2d 418; *State ex rel. Malott v. Cascade Co.*, 94 M 394, 410, 22 P 2d 811; *Wheir v. Dye*, 105 M 347, 351, 73 P 2d 209.

Taxation—526.

61 C.J. Taxation § 1234.

51 Am. Jur. 830, Taxation, § 943 et seq.

History: En. Sec. 1, Ch. 96, L. 1923; Municipal Corporations 521.
 amd. Sec. 1, Ch. 79, L. 1929; amd. Sec. 1, 44 C.J. Municipal Corporations § 3418
 Ch. 67, L. 1931; amd. Sec. 4, Ch. 158, L. et seq.
 1933. 48 Am. Jur. 761, Special or Local Assess-
 ments, § 256 et seq.

84-4105. (2170) Manner of publication of notice. The notice in every case must be published for two weeks in some weekly or daily newspaper published in the county, if there is one; or if there is not, then by posting it in three public places. The failure to publish or post notices does not relieve the taxpayer from any of his liabilities.

History: En. Sec. 3861, Pol. C. 1895; NOTE.—The notice mentioned herein is
 re-en. Sec. 2617, Rev. C. 1907; re-en. Sec. the one contained in section 84-4101.
 2170, R. C. M. 1921. Cal. Pol. C. Sec. 3749.

Taxation 569.
 61 C.J. Taxation § 1343.

84-4106. (2171) Treasurer to note date and amount of payment. The county treasurer must note the date and the amount of the payment of any tax in the assessment book opposite the name of the person paying.

History: En. Sec. 3862, Pol. C. 1895; Taxation 527.
 re-en. Sec. 2618, Rev. C. 1907; re-en. Sec. 61 C.J. Taxation § 1238.
 2171, R. C. M. 1921; amd. Sec. 3, Ch. 96,
 L. 1923. Cal. Pol. C. Sec. 3750.

84-4107. (2172) Receipt to be given. He must give a receipt to the person paying any tax, specifying the amount of the assessment and the tax paid, with a description of the property assessed.

History: En. Sec. 97, p. 108, L. 1891; Taxation 528½.
 re-en. Sec. 3863, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation § 1249.
 2619, Rev. C. 1907; re-en. Sec. 2172, R. C.
 M. 1921. Cal. Pol. C. Sec. 3751.

84-4108. (2172.1) Payment of irrigation or drainage district assessment. It shall be the duty of the county treasurer of each county in which any irrigation or drainage district is located, in whole or in part, to collect and receipt for all taxes and assessments, levied by any such district, in the same manner and at the same time as is required in the collection of taxes upon real estate for county purposes, as provided in section 84-4103, provided, the treasurer shall receive from any taxpayer at any time, the amount due on account of any district assessments of any kind, whether other taxes on the same real estate are paid or not. When any real estate on account of which such district taxes and assessments have been levied has been sold to the county and tax certificate of sale is held by the county, the taxpayer may pay to the treasurer at any time any semi-annual installment of such district tax or assessment, together with the penalty and interest to date of payment on such installment; provided that such payment shall not be deemed a redemption of said property from such tax sale, but shall be credited on account of any redemption that may thereafter be made. In case of any payment pursuant to this act, a separate tax receipt shall issue showing exactly what assessments have been paid and shall show that no other tax on said real estate has been received by said treasurer, and provided further, such county treasurer shall not collect or receive or receipt for any taxes levied for county purposes upon real estate situated wholly or in part within any irrigation or drainage district upon which an

assessment for the purposes of such irrigation or drainage district has been levied, unless the said assessment levied for such irrigation or drainage district purposes be paid, as herein permitted and the receipt therefor presented to the county treasurer at the time such taxes are paid, or paid at the same time.

History: En. Sec. 1, Ch. 71, L. 1923; 28 C.J.S. Drains § 80; 67 C.J. Waters and Sec. 1, Ch. 73, L. 1935; amd. Sec. 1, § 975.
Ch. 188, L. 1943.

Drains 85; Waters and Water Courses 91-93.
231.

84-4109. (2172.2) Application of act. The provisions of this act, with reference to the payment of special assessments, including irrigation and drainage district assessments, shall apply in all cases, where such special assessments are delinquent at the date of the passage and approval of the act.

History: En. Sec. 2, Ch. 73, L. 1935.

84-4110. (2173) Payment of taxes of decedents—how enforced. The district court must require every administrator or executor to pay out of the funds of the estate all taxes due from such estate; and no order or decree for the distribution of any property of any decedent among the heirs or devisees must be made until all taxes against the estate are paid.

History: En. Sec. 98, p. 108, L. 1891; re-en. Sec. 3864, Pol. C. 1895; re-en. Sec. 2620, Rev. C. 1907; re-en. Sec. 2173, R. C. M. 1921. Cal. Pol. C. Sec. 3752.

Cross-Reference

Personal property taxes to be paid before distribution of estate, sec. 91-3905.

Executors and Administrators 212.

34 C.J.S. Executors and Administrators § 380.

84-4111. (2176) Report of taxes collected and delinquent. On the third Monday of December and on the third Monday of June of each year the county treasurer must make a report to the county clerk in detail, showing the amount of taxes collected and a complete delinquent list of all persons and property then owing taxes, and the county clerk shall compare such report with the books of the county treasurer, and shall keep a record of such report in his office.

History: En. Sec. 101, p. 109, L. 1891; re-en. Sec. 3867, Pol. C. 1895; re-en. Sec. 2623, Rev. C. 1907; re-en. Sec. 2176, R. C. M. 1921; amd. Sec. 5, Ch. 96, L. 1923. Cal. Pol. C. Sec. 3758.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

Taxation 560.

61 C.J. Taxation § 3492.

84-4112. (2177) When delinquent list must be completed. The county treasurer must, at the time specified in the preceding section, deliver to the county clerk a complete delinquent list of all persons and property then owing taxes.

History: En. Sec. 102, p. 109, L. 1891; re-en. Sec. 3868, Pol. C. 1895; re-en. Sec. 2624, Rev. C. 1907; re-en. Sec. 2177, R. C. M. 1921.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Sanderson v. Bateman, 78 M 235, 246, 253 P 1100.

84-4113. (2178) All matters on assessment book to be set down in numerical or alphabetical order. In the list so delivered must be set down,

in numerical or alphabetical order, all matters and things contained in the assessment book and relating to delinquent persons or property.

History: En. Sec. 103, p. 109, L. 1891;
re-en. Sec. 3869, Pol. C. 1895; re-en. Sec.
2625, Rev. C. 1907; re-en. Sec. 2178, R. C.
M. 1921. Cal. Pol. C. Sec. 3760.

References

Sanderson v. Bateman, 78 M 235, 246,
253 P 1100.

84-4114. (2179) Credit to be given to treasurer on final statement, etc.

The county clerk must carefully compare the list with the assessment book, and if satisfied that it contains a full and true statement of all taxes due and unpaid, he must foot up the total amount of taxes so remaining unpaid, credit the county treasurer who acted under it therewith, and make a final settlement with him of all taxes charged against him on the assessment book, and must require from him an immediate account for any existing deficiency.

History: En. Sec. 104, p. 109, L. 1891;
re-en. Sec. 3870, Pol. C. 1895; re-en. Sec.
2626, Rev. C. 1907; re-en. Sec. 2179, R. C.
M. 1921. Cal. Pol. C. Sec. 3761.

References

Sanderson v. Bateman, 78 M 235, 246,
253 P 1100.

Taxation \S 557(1).

61 C.J. Taxation \S 1313 et seq.

84-4115. (2180) Treasurer charged with delinquent taxes. After settlement with the county treasurer, as prescribed herein, the county clerk must charge the treasurer then acting with the amount of taxes then due on the delinquent tax list, and within three days thereafter deliver the list, duly certified, to the county treasurer.

History: En. Sec. 105, p. 109, L. 1891;
re-en. Sec. 3871, Pol. C. 1895; re-en. Sec.
2627, Rev. C. 1907; re-en. Sec. 2180, R. C.
M. 1921; amd. Sec. 6, Ch. 96, L. 1923. Cal.
Pol. C. Sec. 3762.

References

Sanderson v. Bateman, 78 M 235, 246,
253 P 1100.

84-4116. (2181) Statement to be transmitted to the state board of equalization by the county clerk. Within ten days after each settlement the county clerk must transmit by mail a statement to the state board of equalization, in such form as it may require, of each kind of property assessed and delinquent, and the total amount of delinquent taxes.

History: En. Sec. 106, p. 109, L. 1891;
re-en. Sec. 3872, Pol. C. 1895; re-en. Sec.
2628, Rev. C. 1907; re-en. Sec. 2181, R. C.
M. 1921; amd. Sec. 7, Ch. 96, L. 1923. Cal.
Pol. C. Sec. 3763.

References

Sanderson v. Bateman, 78 M 235, 246,
253 P 1100.

84-4117. (2182) Publication of notice of tax sales. On or before the last Monday of June of each year, the county treasurer must publish in the manner and for the time prescribed in sections 84-4118, 84-4119 and 84-4120, a notice specifying:

1. That at a given time and place (to be designated in the notice) all property in the county, upon which delinquent taxes are a lien, will be sold at public auction, unless prior to said time, said delinquent taxes, together with all interest, penalties and costs due thereon are paid;

2. A complete delinquent list of all persons and property in the county, now owing taxes, including all city and town property, as to which taxes, or taxes and assessments, are delinquent, is on file in the office of the county treasurer and is subject to public inspection and examination.

History: En. Sec. 107, p. 110, L. 1891; amd. Sec. 3873, Pol. C. 1895; amd. Sec. 1, p. 142, L. 1901; re-en. Sec. 2629, Rev. C. 1907; re-en. Sec. 2182, R. C. M. 1921; amd. Sec. 8, Ch. 96, L. 1923; amd. Sec. 1, Ch. 26, L. 1939. Cal. Pol. C. Sec. 3764.

NOTE.—See sec. 84-4727 providing that delinquent city and town taxes and assessments be certified to and included in tax sales made by county treasurer.

Nonresident Property Owner Presumed to Know That Unless Taxes Paid, Property Subject to Tax Sale

It is incumbent upon nonresident property owners to take notice that all property is taxed annually and that, unless the taxes are paid, the property will be sold at tax sale, irrespective of the fact that the owner requested a county treasurer, instead of the county assessor, to send tax notices to a certain address which request was ignored. *Sutter v. Seudder*, 110 M 390, 395, 103 P 2d 303.

Where Federal Government Recovered Taxes Paid by Indians after Cancellation of Fee Title Granted Without Their Application and Consent

Where patents were issued to federal

government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians in paying tax had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. *Glacier County, Montana v. United States*, 99 F 2d 733, 735.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; *Calkins v. Smith*, 106 M 453, 457, 78 P 2d 74; *Jensen Livestock Co. v. Custer County*, 113 M 285, 292, 124 P 2d 1013.

Taxation Ⓒ658(3).

61 C.J. Taxation § 1595.

51 Am. Jur. 901, Taxation, § 1033 et seq.

84-4118. (2184) Manner of making publication. The publication must be made once a week for three successive weeks in such newspaper published in the county as the board of county commissioners directs. If there is no newspaper published in the county, then by posting a copy of the list in three public places.

History: En. Sec. 109, p. 110, L. 1891; re-en. Sec. 3875, Pol. C. 1895; re-en. Sec. 2631, Rev. C. 1907; re-en. Sec. 2184, R. C. M. 1921. Cal. Pol. C. Sec. 3766.

Operation and Effect

Where a notice of sale for delinquent taxes was published December 30, 1895, and January 6 and 13, 1896, and the sale took place January 27, 1896, the publication was for a sufficient time. This section does not require the commissioners to

designate a paper for publication, but to direct the publication to be made in a certain paper. *Conklin v. Cullen*, 29 M 38, 43, 44, 74 P 72.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; *Thomas v. City of Missoula et al.*, 70 M 478, 226 P 213.

Taxation Ⓒ660.

61 C.J. Taxation § 1594 et seq.

84-4119. (2185) Time and place of sale to be designated. The publication must designate the time and place of sale.

History: En. Sec. 110, p. 110, L. 1891; re-en. Sec. 3876, Pol. C. 1895; re-en. Sec. 2632, Rev. C. 1907; re-en. Sec. 2185, R. C. M. 1921. Cal. Pol. C. Sec. 3767.

References

Anderson v. McClenathan, 62 M 387, 392, 205 P 230; *Thomas v. City of Missoula et al.*, 70 M 478, 226 P 213; *Glacier County v. Schlinski et al.*, 90 M 136, 144, 300 P 270.

84-4120. (2186) Time and place of sale. The time of sale must not be less than twenty-one nor more than twenty-eight days from the first publication, and the place must be in front of the county treasurer's office.

History: En. Sec. 111, p. 110, L. 1891; re-en. Sec. 3877, Pol. C. 1895; re-en. Sec. 2633, Rev. C. 1907; re-en. Sec. 2186, R. C. M. 1921. Cal. Pol. C. Sec. 3768.

ical code, in Conklin v. Cullen, 29 M 38, 44, 74 P 72; Anderson v. McClenathan, 62 M 387, 392, 205 P 230; Thomas v. City of Missoula et al., 70 M 478, 226 P 213.

References

Cited or applied as section 3877, polit-

Taxation⌘655, 656.

61 C.J. Taxation §§ 1602, 1603 et seq.

84-4121. (2187) Copy of publication and affidavit to be filed with the county clerk. The county treasurer, as soon as he has made the publication required by the preceding sections, must file with the county clerk a copy of the publication, with an affidavit attached thereto that it is a true copy of the same; that the publication was made in a newspaper, stating its name and place of publication, and the date of each appearance; and in case there was no newspaper published in his county, that notices were put up in three public places, designating the places therein, which affidavit is prima facie evidence of all the facts stated therein.

History: En. Sec. 112, p. 110, L. 1891; re-en. Sec. 3878, Pol. C. 1895; re-en. Sec. 2634, Rev. C. 1907; re-en. Sec. 2187, R. C. M. 1921. Cal. Pol. C. Sec. 3769.

Taxation⌘662.

61 C.J. Taxation § 1599.

84-4122. (2189) Manner of conducting sale. On the day fixed for sale, or on some subsequent day to which he may have postponed it, of which he must give notice, the county treasurer, between the hours of ten o'clock a. m. and three p. m., must commence the sale of the property advertised, commencing at the head of the list, and continuing in alphabetical or numerical order of lots and blocks until completed.

History: Ap. p. Sec. 1732, 5th Div. Comp. Stat. 1887; amd. Sec. 36, p. 96, Ex. L. 1887; amd. Sec. 113, p. 111, L. 1891; amd. Sec. 3880, Pol. C. 1895; re-en. Sec. 2636, Rev. C. 1907; re-en. Sec. 2189, R. C. M. 1921.

or blocks is "completed" as provided under this section. Jensen Livestock Co. v. Custer County, 113 M 285, 290, 124 P 2d 1013.

References

Glacier County v. Schlinski, 90 M 136, 144, 300 P 270.

Purchaser Does Not Have Whole Day to Appear

The purchaser does not have the whole day to appear, as the sale need continue only until the list of delinquent property in alphabetical or numerical order of lots

Taxation⌘672.

61 C.J. Taxation § 1601.

51 Am. Jur. 912, Taxation, §§ 1045 et seq.

84-4123. (2190) Postponement. He may postpone the day of commencing the sale from day to day; but the sale must be completed within three weeks from the day first fixed.

History: En. Sec. 114, p. 111, L. 1891; re-en. Sec. 3881, Pol. C. 1895; re-en. Sec. 2637, Rev. C. 1907; re-en. Sec. 2190, R. C. M. 1921.

Taxation⌘663.

61 C.J. Taxation § 1604.

84-4124. (2191) Designation of portion to be sold—sale to county—assignment of county's interest—validation of certificates. The owner or person in possession of any real estate offered for sale for taxes due thereon may designate in writing to the county treasurer, prior to the sale, what portion of the property he wishes sold, if less than the whole, but if the owner or possessor does not make such a designation, then the county treasurer shall sell the said real estate so offered for sale in its entirety, and in case there is no purchaser in good faith for the same, as provided in

this code, on the first day that the property is offered for sale, then the whole amount of the property assessed must be struck off to the county as the purchaser, and the duplicate certificate thereof delivered to the county treasurer and filed by him in his office. No charge must be made for the duplicate certificate when the county is a purchaser; and in such case, the county treasurer must make an entry "sold to the county" on the duplicate assessment book opposite the tax, and he must be credited with the amount thereof in the settlement. The interest of the county in any property purchased at a tax sale shall be assigned by the county treasurer as provided by section 84-4138, upon the payment of the taxes, penalties, costs and interest specified in said section. All certificates of sale heretofore issued to any county on the purchase by such county of real property sold at any delinquent tax sale and which certificates of sale are now held by such county, are hereby declared to be valid and subsisting certificates of sale for all purposes, notwithstanding any irregularities in the manner of publishing the delinquent tax list, or in holding such sale, or in selling such property or in the issuance of such certificates of sale, or in the form thereof, provided the taxes for which such property was sold were taxes authorized by law to be assessed against such property, and were lawfully assessed against the same and have not been paid.

History: En. Sec. 115, p. 111, L. 1891; re-en. Sec. 3882, Pol. C. 1895; re-en. Sec. 2638, Rev. C. 1907; re-en. Sec. 2191, R. C. M. 1921; amd. Sec. 1, Ch. 46, L. 1923; amd. Sec. 1, Ch. 31, L. 1929; amd. Sec. 1, Ch. 170, L. 1947.

Constitutionality

The title to ch. 31, laws of 1929 (this section) held sufficient as against contention that it offends against the provisions of art. V, sec. 23, of the constitution, in that it does not clearly express the legislative intent to deal therein with tax certificates. *Martin v. Glacier County*, 102 M 213, 217, 56 P 2d 742.

Irregularities Cured by Validating Statute

In an action to enjoin a county treasurer from issuing a tax deed to city lots bought in by the county at delinquent tax sale irregularities affecting general taxes for the year for nonpayment of which the property was sold relied upon by appellant, held to have been cured by this section, where the taxes were regularly levied and there was a substantial compliance with the statutes relative to notice and sale, thus rendering the certificate of sale immune to attack. *Morse v. Kroger et al.*, 87 M 54, 59, 285 P 185.

Irregularities in sale of delinquent real property not affecting jurisdiction, held cured by this section validating certificates of sale, and sec. 84-4160.1 validating tax deeds theretofore issued. *Martin v. Glacier County*, 102 M 213, 220, 56 P 2d 742.

Property May Be Struck Off to County on First Day of Sale Where No Purchaser

It is no longer the law that where there is no purchaser in good faith on the first day delinquent property is offered for sale, it must not be struck off to the county until the following day; therefore a tax sale certificate issued to the county in 1931 on the same day the property was offered for sale and struck off to the county was valid. Neither does the purchaser have the whole day to appear, as the sale need continue only until the list of delinquent property in alphabetical or numerical order of lots or blocks is "completed" under sec. 84-4122. *Jensen Livestock Co. v. Custer County*, 113 M 285, 290, 124 P 2d 1013.

Sale En Masse

A tax deed, showing on its face that it was based on a sale en masse of several non-contiguous parcels, was void. *Casey v. Wright*, 14 M 315, 319, 36 P 191; *North Real Estate, Loan etc. Co. v. Billings L. & T. Co.*, 36 M 356, 367, 93 P 40; *Cullen v. Western Mtg. & W. Title Co.*, 47 M 513, 526, 134 P 302; *Horsky v. McKennan*, 53 M 50, 60, 162 P 376. The doctrine laid down in these cases was approved in *Lindeman v. Pinson*, 54 M 466, 470, 171 P 271.

Held, under this section as amended by chapter 46, laws of 1923, a tax sale certificate issued to the county showing on its face that several parcels of land were sold en masse, is not void on its face, since thereunder the entire property assessed may be struck off to the county for want

of purchasers. *Skillen et al. v. Harris et al.*, 90 M 389, 392, 3 P 2d 1054.

Sales to the Counties

This section prohibits the county from becoming a competitive bidder at the sale of property for delinquent taxes, and it can only acquire it when there is no other purchaser in good faith; and the recitals in the deed must show the right of the county to take the property, and that it did not enter the lists as a competitive bidder for the same, otherwise the deed is void. The county cannot purchase lands at a tax sale unless authorized to do so by the statute, and a strict compliance with the statute must be had before the title of the owner can be divested. *Rush v. Lewis and Clark County*, 36 M 566, 569, 93 P 943.

A statement in a deed conveying land sold to a county for taxes, that the property was offered for sale "in accordance with law," being merely a conclusion of law, imparts no validity to the deed if the recitals therein show that the sale was had at public auction at which the county was a competitive bidder. *Rush v. Lewis and Clark County*, 37 M 240, 242, 95 P 836.

A tax deed to two or more noncontiguous tracts of land showing on its face that the tracts were struck off to the county together, held, not void for that reason, said section providing that where there is no purchaser in good faith "the whole amount of the property must be struck off to the county." *Rogers v. Embleton et al.*, 90 M 134, 135, 300 P 296. See, also, *Skillen et al. v. Harris et al.*, 90 M 389, 3 P 2d 1054.

Under this section as amended (laws of 1923, ch. 46) providing that where no purchaser appears on the first day set for delinquent tax sale, and "when the property is offered for sale thereafter" there is again no purchaser, it may be struck off to the county, a sale may not be made to the county on the first day but only on some subsequent day. *Glacier County v. Schlinski et al.*, 90 M 136, 144, 300 P 270.

Where the county is the purchaser of property at tax sale, the treasurer is without authority to charge it fifty cents for the duplicate certificate of sale, and therefore the county may not in its application for a tax deed add such charge to the amount which the redemptioner must pay to redeem the property. *Glacier County v. Halvorson Mercantile Co.*, 93 M 520, 523, 19 P 2d 648.

Statute Ineffective to Cure Irregularities in Tax Deed Void on Face

Chapter 31, laws of 1929 (this section) (effective July 1, 1929), an act to cure irregularities in the issuance of certificates of sale to lands struck off to the county on delinquent tax sales, has no application to a tax deed void on its face. *Glacier County v. Schlinski et al.*, 90 M 136, 145 et seq., 300 P 270.

Where Federal Government Recovered Taxes Paid by Indians, After Cancellation of Fee Title Granted Without Their Application and Consent

Where patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians in paying tax had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. *Glacier County v. United States*, 99 F 2d 733, 735.

References

Sanderson v. Bateman, 78 M 235, 246, 253 P 1100; *School Dist. No. 12 v. Pondera Co.*, 89 M 342, 346, 297 P 498; *State ex rel. City of Billings v. Osten*, 91 M 76, 80, 5 P 2d 562; *State ex rel. Soulders v. District Court*, 92 M 272, 12 P 2d 852; *State ex rel. Malott v. Cascade Co.*, 94 M 394, 399 et seq., 22 P 2d 811; *Anderson v. Mace et al.*, 99 M 421, 45 P 2d 771.

Taxation 670, 679(1).

61 C.J. *Taxation* §§ 1610 et seq., 1669 et seq.

51 Am. Jur. 893, *Taxation*, §§ 1022 et seq.

Sale of property at tax sale for more or less than the amount of taxes, penalties and costs as affecting its validity. 147 ALR 1141.

Personal liability of tax official or his bond to purchaser at tax sale. 149 ALR 220.

Provisions of tax statute as to time for performance of acts by boards or officers as mandatory or directory. 151 ALR 248.

Discretion of court to refuse confirmation of, or to set aside, tax sale, where all proceedings are in compliance with statutory requirements. 152 ALR 887.

84-4125. (2192) Resale when purchaser does not make payment. If the purchaser does not pay the tax and costs before ten o'clock p. m. of the following day, the property, on the next sale day before the regular sale, must be resold for taxes and costs.

History: En. Sec. 116, p. 111, L. 1891; re-en. Sec. 3883, Pol. C. 1895; re-en. Sec. 2639, Rev. C. 1907; re-en. Sec. 2192, R. C. M. 1921.

Taxation 690.
61 C.J. Taxation § 1650.

84-4126. (2193) Bid of person once refusing to make payment not to be received. The bid of any person refusing to make the payment for the property purchased by him must not be received on the sale of any property advertised in the delinquent tax list of that year.

History: En. Sec. 117, p. 111, L. 1891; re-en. Sec. 3884, Pol. C. 1895; re-en. Sec. 2640, Rev. C. 1907; re-en. Sec. 2193, R. C. M. 1921.

Taxation 674.
61 C.J. Taxation § 1615 et seq.

84-4127. (2194) Treasurer to give purchaser a duplicate certificate of sale. After receiving the amount of taxes and costs, the treasurer must make out in duplicate a certificate, dated on the day of sale, stating (when known) the name of the person assessed, a description of the land sold, the amount paid therefor, that it was sold for taxes, giving the amount and the year of the assessment, and specifying the time when the purchaser will be entitled to a deed.

History: En. Sec. 118, p. 111, L. 1891; re-en. Sec. 3885, Pol. C. 1895; re-en. Sec. 2641, Rev. C. 1907; re-en. Sec. 2194, R. C. M. 1921. Cal. Pol. C. Sec. 3776.

v. Western etc. Title Co., 47 M 513, 525, 134 P 302.

References

Sanderson v. Bateman, 78 M 235, 247, 253 P 1100; State ex rel. Malott v. Cascade Co., 94 M 394, 400, 22 P 2d 811.

Operation and Effect

Where from recitals in a tax deed the year of the assessment was made apparent indirectly, the fact that it contained no direct statement imparting such information did not render the deed void. Cullen

Taxation 686.

61 C.J. Taxation § 1651 et seq.

84-4128. (2195) Signature of certificate of sale and disposition of copies. The certificate must be signed by the county treasurer, and one copy delivered to the purchaser and the other filed in the office of the county clerk.

History: En. Sec. 119, p. 112, L. 1891; re-en. Sec. 3886, Pol. C. 1895; re-en. Sec. 2642, Rev. C. 1907; re-en. Sec. 2195, R. C. M. 1921.

References

State ex rel. Malott v. Cascade Co., 94 M 394, 400, 22 P 2d 811.

84-4129. (2196) Treasurer to enter in a book description of land sold. The county treasurer, before delivering any certificate, must in a book enter a description of the land sold corresponding with the description in the certificate, the date of sale, purchaser's name, and the amount paid, regularly number the descriptions on the margin of the book, and put a corresponding number on each certificate.

If taxes are paid subsequent to prior tax sale certificate, before such taxes become delinquent, by anyone other than the record owner of the land or to whom the land was assessed, the county treasurer shall make an entry in such book, opposite the name of such record owner of the land, or to whom the land was assessed, the date of such payment, the name of the person making such payment, and the amount paid. Such book must be open to public inspection without fee during office hours when not in actual use.

History: En. Sec. 120, p. 112, L. 1891; re-en. Sec. 3887, Pol. C. 1895; re-en. Sec.

2643, Rev. C. 1907; re-en. Sec. 2196, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1939.

Taxation 684(2).

61 C.J. Taxation § 1644 et seq.

84-4130. (2197) Lien of state when vests in purchaser—how alone divested. On filing the certificate with the county clerk, the lien of the state vests in the purchaser, and is only divested by the payment to him or to the county treasurer for his use of the purchase money and one per cent. additional for each month that elapses from the date of the sale until redeemed.

History: En. Sec. 121, p. 112, L. 1891; re-en. Sec. 3888, Pol. C. 1895; re-en. Sec. 2644, Rev. C. 1907; re-en. Sec. 2197, R. C. M. 1921.

References

State ex rel. City of Billings v. Osten, 91 M 76, 80, 5 P 2d 562.

Taxation 730.

61 C.J. Taxation § 1822.

84-4131. (2197.1) Refund to tax sale purchaser on declaration of sale as void—interest—liens of county and purchaser. Where a sale of land for delinquent taxes thereon, is declared void by judgment of court for irregularity in the assessment, levy or sale, the money paid by the purchaser at the sale, or by any assignee of the state, county, city, town, or district, upon taking the assignment shall, with interest at the rate of eight (8) per cent per annum, from the date of such payment, be refunded to the purchaser or owner of such tax certificate, upon the order of the chairman of the board of county commissioners of the county in which such lands lie; and the county shall then have a lien upon said property for the legal taxes on said property for the year in which it was sold together with the penalty and interest, and so much of such money as has been paid to the state, city, town or district by the treasurer of such county shall be charged to the state, city, town or district by such treasurer, and deducted from the next money due the state, city, town or district respectively on account of taxes paid or collected; provided, further, that purchasers of such certificate or owners thereof by assignment, where sales have been made by cities or towns, which by resolution or ordinance collect their own taxes, instead of having the same collected by the county treasurer, shall be reimbursed, in similar manner and in similar circumstances, out of the city or town treasury, upon order of the mayor, with proper charges and deductions against the respective funds of the said city or town, upon the next collection of taxes by said city or town; and, provided, further, that if such purchaser or owner of such certificate, after such purchase or assignment from the state, county, city, town or district, have paid the taxes, penalty and interest upon such piece or parcel of land, he or his assignee thereof, shall have a lien upon such piece or parcel for the amount of taxes, penalty and interest so paid, with interest as now provided by law to be collected upon delinquent taxes, which lien shall have the same priority as is now provided by law; and if he is in possession of such piece or parcel of land, he shall not be ejected therefrom until such amount and interest and penalty shall be paid.

History: En. Sec. 1, Ch. 131, L. 1927.

Taxation 821(1-3).

61 C.J. Taxation § 2076.

51 Am. Jur., Taxation, p. 978, §§ 1135 et seq.; p. 1005, §§ 1167 et seq.

Right to interest on tax free bonds. 57 ALR 357.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where tax sale proves invalid. 77 ALR 824.

Mortgagee's right to recover taxes paid to protect his security as affected by invalidity of mortgage. 84 ALR 1371.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Permissive or mandatory character of legislation providing for refund of taxes

illegally assessed or collected. 103 ALR 817.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Assignability of claim for tax refund, and rights of assignee in respect thereof. 134 ALR 1202.

84-4132. (2201) Time for redemption. A redemption of the property sold may be made by the owner, or any party having any interest in or lien upon such property, within thirty-six (36) months from the date of purchase, or at any time prior to the giving of the notice and the application for a deed as provided in this act.

History: En. Sec. 122, p. 113, L. 1891; amd. Sec. 3889, Pol. C. 1895; re-en. Sec. 2645, Rev. C. 1907; re-en. Sec. 2201, R. C. M. 1921; amd. Sec. 1, Ch. 125, L. 1933; amd. Sec. 1, Ch. 39, L. 1941. Cal. Pol. C. Sec. 3780.

Operation and Effect

The right to redeem property from tax sale is wholly statutory and the statutes relating to redemption must be liberally construed, but the person seeking to redeem must bring himself within their provisions. *State ex rel. Bell v. McCullough*, 85 M 435, 438, 279 P 246.

See, also, *State ex rel. Federal Land Bk. v. Hays*, 86 M 58, 282 P 32 to the same effect.

Held, that where a county treasurer on the last day on which redemption of property from tax sale could be made, on the strength of a telegram received by him from the attorneys of the delinquent owner that on that day a check covering the redemption money had been mailed in New York City, paid the amount due out of his own funds and mailed a certificate of redemption to the attorneys, although under section 84-4133, redemption must be made in lawful money, there was a clear violation of his official duty, and the district court committed error in dismissing the action of the holder of the certificate of sale to the property seeking to compel the treasurer by writ of mandate to issue to him a tax deed thereto. *State ex rel. Bell v. McCullough*, 85 M 435, 438, 279 P 246.

This section provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed." Section 84-4170 mentions "the date of the expiration of the period for redemption," but since under sec. 84-4151, the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in sec. 84-4170 is the time of the application for tax deed. *Hartman v. Nimmack*, 116 M 392, 397, 154 P 2d 279.

Where Federal Government Recovered Taxes Paid by Indians, After Cancellation of Fee Title Granted Without Their Application and Consent

Where patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians in paying tax had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. *Glacier County v. United States*, 99 F 2d 733, 735.

References

Hinz v. Musselshell County et al., 82 M 502, 513, 267 P 1113; *State v. Board of County Commrs.*, 86 M 595, 601, 285 P 932; *State et al. v. Board of Commissioners et al.*, 89 M 37, 60, 296 P 1; *State ex rel. City of Billings v. Osten*, 91 M 76, 80, 5 P 2d 562; *State ex rel. Malott v. Cascade Co.*, 94 M 394, 401, 22 P 2d 811; *State ex rel. Jensen Livestock Co. v. Hy-slop*, 111 M 122, 125, 107 P 2d 1088; *Jensen Livestock Co. v. Custer County*, 113 M 285, 294, 124 P 2d 1013.

Taxation—699.

61 C.J. Taxation § 1700 et seq.

51 Am. Jur. 953, Taxation, §§ 1097 et seq.

Right of receiver to exercise insolvent's right to redeem from tax sale. 35 ALR 262.

Right of person under disability to redeem from tax sale. 65 ALR 582.

Public officer's right to redeem from tax sale for benefit of owner. 66 ALR 1035.

Erroneous information by official as excusing taxpayer's failure to redeem in time. 134 ALR 1299.

Constitutionality, construction, and application of statutes providing for par-

tial or proportional redemption from tax sale of land. 145 ALR 1328.

Retroactive application, to previous sales, of statutes reducing period of re-

demption from tax sales, as unconstitutional impairment of contract obligations. 147 ALR 1123.

84-4133. (2202) Redemption to be made in lawful money—credit to be given to whom. Redemption must be made in lawful money, and when paid to the county treasurer, he must credit the amount paid to the person named in the county treasurer's certificate, and pay it on demand to the person or his assignees.

History: En. Sec. 123, p. 113, L. 1891; re-en. Sec. 3890, Pol. C. 1895; re-en. Sec. 2646, Rev. C. 1907; re-en. Sec. 2202, R. C. M. 1921. Cal. Pol. C. Sec. 3781.

References

State ex rel. Bell v. McCullough, 85 M 435, 438, 279 P 246.

Taxation—710.

61 C.J. Taxation § 1760 et seq.

51 Am. Jur. 956, Taxation, § 1100.

84-4134. (2203) Treasurer's report of persons entitled to redemption and amount due each. In each report the treasurer makes to the board of county commissioners he must name the persons entitled to redemption money, and the amount due to each.

History: En. Sec. 124, p. 113, L. 1891; re-en. Sec. 3891, Pol. C. 1895; re-en. Sec. 2647, Rev. C. 1907; re-en. Sec. 2203, R. C. M. 1921.

Taxation—712.

61 C.J. Taxation § 1794.

84-4135. (2204) Clerk to file and enter certificate of sale. On receiving the certificate of sale, the county clerk must file it and make an entry in a book similar to that required of the treasurer.

History: En. Sec. 125, p. 113, L. 1891; re-en. Sec. 3892, Pol. C. 1895; re-en. Sec. 2648, Rev. C. 1907; re-en. Sec. 2204, R. C. M. 1921.

Taxation—711.

61 C.J. Taxation § 1764 et seq.

84-4136. (2205) When property is redeemed, clerk to note it in book. On the presentation of the receipt of the person named in the certificate or of the county treasurer for his use, of the total amount of redemption money, the county clerk must mark the word "redeemed," the date, and by whom redeemed, on the certificate and in the margin of the book where the entry of the certificate is made.

History: En. Sec. 126, p. 113, L. 1891; re-en. Sec. 3893, Pol. C. 1895; re-en. Sec.

2649, Rev. C. 1907; re-en. Sec. 2205, R. C. M. 1921.

84-4137. (2206) Treasurer's deed when property is not redeemed in time—charges for making an acknowledgment. If the property is not redeemed in the time allowed by law for its redemption, the county treasurer, or his successor in office, must make to the purchaser, or his assignee, a deed of the property, reciting in the deed substantially the matters contained in the certificate, and that no person has redeemed the property during the time allowed for its redemption. The county treasurer is entitled to receive from the purchaser, for the use of the county, three dollars for making such deed. No charge must be made by the county treasurer for the making of any such deed where the county is the purchaser; and the acknowledgment of all such deeds, as provided in section 84-4124, must be taken by the county clerk free of charge.

History: En. Sec. 127, p. 113, L. 1891; re-en. Sec. 3894, Pol. C. 1895; re-en. Sec. 2650, Rev. C. 1907; re-en. Sec. 2206, R. C. M. 1921. Cal. Pol. C. Sec. 3785.

References

McKenzie v. Evans et al., 96 M 1, 12 et seq., 29 P 2d 657.

Taxation 748, 765.

61 C.J. Taxation §§ 1872, 1924.

84-4138. (2207) Assignment of rights of county in property acquired at tax sale—form of certificate. At any time after any parcel of land has been bid in by the county as the purchaser thereof for taxes, as provided in section 84-4124, the same not having been redeemed, the county treasurer shall assign all the right of the county therein, acquired at such sale, to any person who shall pay the amount for which the same was bid in, with interest upon the original tax at the rate of two-thirds ($\frac{2}{3}$) of one per cent per month, and the amount of all subsequent delinquent taxes, penalties, costs, and interest, as provided by law, upon the same from time to time when such tax became delinquent. He shall execute to such person a certificate for such parcel, which may be substantially in the following form:

"I, _____, The treasurer of the county of _____, State of Montana, do hereby certify that at the sale of lands pursuant to the tax assessment for the year 19____, in the county of _____, and which sale was held on the _____ day of _____ 19____, for the purpose of liquidating said assessment, the following described parcel of land, situate in said county of _____, State of Montana, to-wit: (insert description) was duly offered for sale; that there was no purchaser in good faith for the same as provided by law and no person or purchaser offered to take the same and pay the taxes, cost, and charges due as aforesaid. Accordingly, the whole amount of the property assessed and described as above was struck off to the county of _____ as purchaser thereof for the sum of _____, and the same still remaining unredeemed, and on this day _____ having paid into the treasury of said county the amount for which the same was bid in, together with all subsequent delinquent taxes, penalties, costs, and interest, amounting in all to _____ dollars;

Now, therefore, in consideration thereof, and pursuant to the statute in such case made and provided, I do hereby assign and set over all the right, title and interest of the county of _____, State of Montana, acquired in said lands under and by virtue of said sale, to the said _____, his heirs and assigns, forever, together with all the rights, powers, and privileges of the said county of _____ to take steps to receive a deed thereof, or receive payment in case of a redemption, subject, however, to redemption as provided by law.

Witness my hand and official seal of office this _____ day of _____, 19_____.

County Treasurer."

Provided, that in case the certificate hereinabove described shall by accident become lost or destroyed by the assignee, then in such an event the county treasurer shall issue a duplicate certificate to the assignee after the said county treasurer is convinced that the said certificate has been lost or destroyed and after the said assignee has made an affidavit to that effect.

History: En. Sec. 1, Ch. 151, L. 1917; re-en. Sec. 2207, R. C. M. 1921; amd. Sec. 1, Ch. 101, L. 1937; amd. Sec. 1, Ch. 24, L. 1939; amd. Sec. 1, Ch. 11, L. 1947.

County Treasurer Without Authority to Assign Right of County in Irrigation District Land Acquired at Tax Sale

Held, that the county treasurer is without authority to assign the right of his county to irrigation lands acquired by it at tax sale under either the irrigation district law as it was prior to July, 1920, when the district sold its bonds, or under this section, a general statute, which provides that where a county has bid in a parcel of land for "taxes" the treasurer shall assign its right to any person willing to pay the amount due, irrigation district assessments not being taxes within the meaning of the section. (Justices Stewart and Angstman dissenting.) State ex rel. Malott v. Cascade Co., 94 M 394, 402 et seq., 22 P 2d 811.

Id. It is the duty of a county which holds irrigation district lands acquired at tax sale to apply for tax deed, sell the land as speedily as possible and distribute the proceeds agreeably to equity, and where it has disposed of such land by assignment of its right under this section, it must return the purchase price.

References

Sanderson v. Bateman, 78 M 235, 247, 253 P.1100; State ex rel. City of Billings v. Osten, 91 M 76, 80, 5 P 2d 562; McKenzie v. Evans et al., 96 M 1, 12 et seq., 29 P 2d 657; Anderson v. Mace et al., 99 M 421, 45 P 2d 771; Christofferson v. Chouteau County, 105 M 577, 584, 74 P 2d 427; Calkins v. Smith, 106 M 453, 459, 78 P 2d 74.

Taxation—742.

61 C.J. Taxation § 1850 et seq.

84-4139. (2208) To what sales preceding section applicable—rights of holder of certificate. The provisions of this act shall apply to any sales of land for which a treasurer's deed shall not at the time of the passage hereof have actually issued, regardless of whether the sale shall have been made at any date heretofore, as well as to future sales for recovery of taxes; and the holder of any such certificate shall therefore have the same rights, powers, and privileges with regard to securing a deed as any purchaser of lands at tax sale may now have.

History: En. Sec. 2, Ch. 151, L. 1917; re-en. Sec. 2208, R. C. M. 1921.

References

State ex rel. Malott v. Cascade Co., 94 M 394, 402, 22 P 2d 811.

84-4140. (2208.2) Disposal of money from sale or lease of tax deed lands. All moneys received from the sale or leasing of any such lands, or of any lands received in exchange, shall be paid into the county treasury and shall be credited to each fund as the same would have been credited had the moneys so received been paid as taxes upon said land acquired by the county by tax deed, or upon the lands exchanged, and any surplus after paying all taxes with interest and penalties shall belong to the county.

History: En. Sec. 2, Ch. 65, L. 1933.

Taxation—682, 683.

61 C.J. Taxation § 1530 et seq.

References

Sanborn v. Lewis and Clark County, 113 M 1, 20, 120 P 2d 567.

84-4141. (2208.3) Sale of exchanged lands. As to any lands received by the county in exchange the same may be sold or leased the same as might have been done with the lands exchanged.

History: En. Sec. 3, Ch. 65, L. 1933.

Taxation—679(5).

61 C.J. Taxation § 1676 et seq.

84-4142. (2208.4) Quieting title to lands acquired by county for taxes. Any county which has acquired, or may acquire, title to any land by tax deed may commence an action in the county to quiet title thereto, and in

such action several tracts of land contiguous or non-contiguous may be included in one complaint, and all persons claiming any title to, interest in, or lien upon any of said lands may be joined as defendants. The procedure in such action shall be as provided in sections 93-6203 to 93-6211. It shall be the duty of the county attorney, upon request of the board of county commissioners of the county, to promptly commence and prosecute to final judgment any and all such actions.

History: En. Sec. 4, Ch. 65, L. 1933.

Taxation 793.

61 C.J. Taxation § 1978.

84-4143. (2208.5) Effect of act. Nothing in this act shall be held or construed to be as an amendment or modification of the provisions of section 84-4161.

History: En. Sec. 5, Ch. 65, L. 1933.

Taxation 778, 784, 785.

61 C.J. Taxation §§ 1831 et seq., 1837 et seq.

84-4144. Confirmation of tax deed—action for, authorized. Whenever the validity of any tax deed heretofore issued appears doubtful, the county or person to whom such deed was issued, or its or his assigns or successors in interest may, in addition to all other methods now provided by law, bring and maintain an action in the district court of the county in which said real property is situated for the purpose of acquiring a confirmation deed from the county treasurer and to quiet title to the lands to be covered thereby; which said action shall be brought and, except as herein provided, shall be prosecuted as other civil actions. Any action now pending to quiet title to lands covered by tax deeds may be amended to conform to this act.

History: En. Sec. 1, Ch. 43, L. 1945.

84-4145. Procedure. The action shall be commenced by the filing of a verified complaint in which the party bringing the same shall be named as plaintiff and all persons having any interest in said land, whose interest shall appear of record in the office of the county clerk of the county in which the property is situated, together with the county treasurer, shall be named as defendants; and plaintiff shall also join as defendants all persons unknown who might make any claim to said real property by adding in the caption of the complaint in such action the words "and all unknown heirs and devisees of any defendant who may be deceased and all other persons unknown, claiming, or who might claim any right, title, estate or interest in, or lien or encumbrance upon the real property described in the complaint, or any thereof, adverse to plaintiff's ownership or any cloud upon plaintiff's title thereto, whether such claim or possible claim be present or contingent, including any claim or possible claim of dower, inchoate or accrued." The complaint shall, among other things, allege the description of the lands involved, that the said lands were duly assessed, that said taxes become delinquent, said land was sold for said taxes, that a tax deed or deeds to said lands has been heretofore issued and the general allegation that defendants have or claim some right, title, claim or interest in said land or in parts and parcels thereof adverse to plaintiff's claim and title thereto. If the county be the plaintiff, said action shall be brought in the name of the county. Several tracts of land, contiguous or non-contiguous and whether

owned by different defendants or owners, and whether sold at the same time or at different times, may be included in one action, and all persons claiming title to or interest in or lien upon any of said lands, or any part thereof, although their said claims are independent and not in common and do not cover the same tracts, may be joined as defendants.

History: En. Sec. 2, Ch. 43, L. 1945.

84-4146. Notice of pendency of action. Upon the filing of the complaint, a notice of the pendency of said action shall be filed in the office of the county clerk of the county in which the action is brought.

History: En. Sec. 3, Ch. 43, L. 1945.

84-4147. Defendants, rights of. Any defendant may appear in said action within the time provided by law for appearances in civil actions and may set upon any defense to said action he may have. Any defendant having an interest in said land as owner, encumbrancer, or otherwise, may therein question the legality, validity or sufficiency of the assessment or sale of said land and the tax deed formerly issued.

If upon the trial of said action, the court shall find that the former tax deed is invalid, then any such defendant may make redemption of the land in which he shall have an interest by paying the total amount of delinquent taxes from, but including, the year said taxes first became delinquent to and including the current year with penalties and interest as provided by law from date of delinquency, together with costs and expenses of the suit; said payment to be made within such time as may be ordered by the court, but not exceeding 10 days. If such payment be made, the county treasurer shall issue a certificate of redemption for said land so redeemed and the action as to said land and said defendant shall be dismissed. If said payment is not made as provided, then said defendant shall not be heard further in said action.

History: En. Sec. 4, Ch. 43, L. 1945.

84-4148. Trial of action and judgment. Upon the trial of said action, the court shall require proof of the facts alleged in the complaint and other pleading in said action, and by its judgment the court shall ascertain and determine by proper findings that the land was duly assessed, that said land was duly sold for the delinquent taxes, that said lands nor any part thereof has been redeemed from said sale, and that a tax deed or deeds to said lands has been heretofore issued and said judgment shall order and direct the county treasurer of said county to issue to the plaintiff a confirmation deed of conveyance for said land and that said judgment so entered and the deed issued, as directed therein, shall be binding and conclusive upon the defendants therein named and upon all persons claiming under any of them; and from and after the entry of said judgment all defendants therein named and all persons claiming under any of said defendants, including all unknown persons, shall be forever barred and enjoined from claiming or asserting any claim of any kind or nature whatsoever existing at the time of the entry of said judgment in or to the lands involved in said action, or to any part or parcel thereof, and shall decree that the plaintiff is the owner of said land free and clear of all and every claim of said defendants.

History: En. Sec. 5, Ch. 43, L. 1945.

84-4149. Contents and form of deed. Upon filing with the county treasurer a certified copy of the judgment, he must issue to the plaintiff a deed for the lands described in the judgment, which deed in substance shall be as follows:

"This indenture, made by and between (insert name of treasurer), county treasurer of the county of (insert name of county) in the State of Montana, the party of the first part, and (insert name of grantee) the party of the second part, witnesseth:—

Whereas the lands and premises hereinafter described have been heretofore duly and regularly assessed to the then owners thereof, that said taxes were not paid and said property was sold for the payment of said taxes for the amount thereof, and certificates of sale were duly issued to the purchaser of said lands and filed as required by law, and,

Whereas, heretofore proceedings were had under which a tax deed for said land was issued to (name of grantee) and that the validity of said deed is doubtful, and

Whereas, by virtue of a judgment and decree entered by the district court of the judicial district of the State of Montana in and for the county of on the day of A. D., wherein was plaintiff and and others were defendants, a certified copy thereof being filed in my office, I, the said county treasurer aforesaid, am ordered and directed to issue this deed of conveyance for said lands.

Now, therefore, I, (name of treasurer), of the county of, in the State of Montana, for and in consideration of the sum of said taxes, penalties and interest paid on said property and in conformity to said judgment, do grant and convey to (insert name of grantee) of all the lands and premises situated in the county of in the State of Montana and described as follows:

..... Insert Description

Witness my hand and seal this day of, 19....
(seal)

.....
County Treasurer of County, Montana.

State of Montana, }
County of } ss.

On this day of A. D., before me, a Notary Public for the State of Montana personally appeared personally known to me to be the county treasurer of the county of, Montana, and acknowledged to me that he, as such county treasurer, executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal the day and year in this certificate first above written.
(seal)

History: En. Sec. 6, Ch. 43, L. 1945.

84-4150. Title conveyed. The deed issued pursuant to this act shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period of redemption, free of all encumbrances and clear of any and all claims of all of said defendants to said action, and of all persons claiming under them, except the lien for taxes subsequently attached and other liens and assessments now specified and provided by law.

History: En. Sec. 7, Ch. 43, L. 1945.

84-4151. (2209) Notice of application for tax deed. The purchaser of property sold for delinquent taxes or his assignee must, at least sixty (60) days previous to the expiration of the time for redemption, or at least sixty (60) days before he applies for a deed, serve upon the owner of the property purchased, if known, and upon the person occupying the property, if the said property is occupied, and, if the records in the office of the county clerk and recorder show an unreleased mortgage or mortgages upon the property purchased, upon the mortgagee or mortgagees named in said mortgage or mortgages, or if assigned, upon the assignee or assignees of said mortgage or mortgages, a written notice, stating that said property, or a portion thereof, has been sold for delinquent taxes, giving the date of sale, the amount of property sold, the amount for which it was sold, the amount due, and the time when the right of redemption will expire, or when the purchaser will apply for a tax deed, and the owner of the property, or the mortgagee, or the assignee of said mortgagee has the right of redemption indefinitely until such notice has been given and the deed applied for, upon the payment of fees, percentages, penalties and costs required by law. Notice of any owner, mortgagee or assignee of mortgagee shall be given by registered letter addressed to such mortgagee or assignee at the post office address of said owner, mortgagee or assignee as disclosed by the mortgage records in the office of the county clerk and recorder. In case of unoccupied property, or a mining claim, such notice must be by registered mail deposited in the post office, addressed to any known owner residing in or outside of said county with the postage thereon prepaid, at least sixty (60) days before the expiration of the time for redemption, or at least sixty (60) days before the purchaser applies for such tax deed, in addition to notice to the mortgagee or assignee of mortgagee in the manner, and as hereby is provided; provided, that in all cases where the post office address of the owner, mortgagee, or assignee is unknown, the applicant shall publish once a week for two (2) successive weeks in a newspaper published in the county where the property is situated, a notice substantially in the following form:

Notice of Application for Tax Deed

Notice is hereby given that the undersigned will on the day of 19..... apply to the county treasurer of county for a tax deed to the following described property, to-wit:
(Describe property)

Amount due \$.....

Date

Applicant.

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The first publication of such notice must be made at least sixty (60) days before the date of redemption or application for said deed. In all cases due proof of service of notice in whatever manner given, supported by the affidavit required by law, must be filed immediately with the clerk and recorder of the county in which the property is situated, and be kept as a permanent file in his office, and such proof of notice when so filed shall be prima facie evidence of the sufficiency of the notice.

History: En. Sec. 128, p. 114, L. 1891; amd. Sec. 3895, Pol. C. 1895; amd. Sec. 1, Ch. 79, L. 1905; re-en. Sec. 2651, Rev. C. 1907; amd. Sec. 1, Ch. 33, L. 1917; amd. Sec. 1, Ch. 87, L. 1921; re-en. Sec. 2209, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1929; amd. Sec. 1, Ch. 190, L. 1933.

Cross-Reference

Fees for tax deeds, sec. 25-234.

Curative Statutes No Help for Failure to Give Notice in Violation of Due Process of Law

Since the legislature could not in violation of the due process of law clause of the constitution have done away with the necessity of giving notice of an application for tax deed prescribed by this section, contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by chs. 94 and 105 L. 1939, held without merit. *Kerr v. Small*, 112 M 490, 493, 117 P 2d 271.

Defects Held Cured by Validating Statute

Where the appellant contended that notice of application for tax deed was fatally defective in that it recited that the amount due for taxes, penalties, etc., was computed at a date seven days later than the date of the notice, held, that the defect was one of those cured by ch. 94 L. 1939, validating tax deeds issued prior thereto. *Stoican v. Washburn*, 112 M 603, 604, 120 P 2d 426.

Though ch. 132 L. 1937 cures defects or mistakes in a notice of application for tax deed so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of this section in that behalf. *Sanborn v. Lewis and Clark County*, 113 M 1, 19, 120 P 2d 567.

Implied Power to Install Tract Index

In view of the provisions of this and the following section, those of section 84-4156, and the powers conferred upon the county commissioners by sections 16-1001 to 16-1032, held, that a board of county commissioners may authorize the instal-

lation and maintenance of a tract index in the office of the county clerk for information on lands sold for taxes and facilitating application for tax deeds, under their implied powers. *Ransom v. Pingel*, 104 M 119, 122, 65 P 2d 616.

In Effect an Action In Rem

In effect, an application for tax deed is an action in rem, to which all persons interested in the property involved are parties defendant. Under our law as it now stands, the holder of a tax sale certificate can use this informal method of procedure, or can take the more formal method of bringing an action in the district court under secs. 84-4162 et seq. *State ex rel. Freebourn v. Yellowstone County*, 108 M 21, 27, 88 P 2d 6.

Lands Not Subject to Tax Deed Proceedings

State lands are not the subject of tax deed proceedings, for the reason that the welfare of the entire state and its citizens is involved, and that valuable rights of the people might be lost thereby through malfeasance or nonfeasance of state officers or employees. This rule is based upon public policy. See sec. 89-2820. *State ex rel. Freebourn v. Yellowstone County*, 108 M 21, 27, 88 P 2d 6.

Law in Force at Time of Tax Sale and Issuance of Tax Certificate Governs Notice of Sale and Application for Tax Deed

Under sec. 3895 Pol. Code Mont. 1895, where tax sale purchaser of mining property merely posted notice of sale on land, without serving notice upon owners residing in county, his title was invalid on jurisdictional grounds; and posting notice 29 days did not comply with requirement of "30 days before" expiration of time for redemption; and affidavit not showing that notice was posted in a conspicuous place did not show compliance with statute governing notice; and amendment of statute must be complied with; and validation statute not sufficient to overcome defect of service; and time for redemption was extended indefinitely. *Farris v. Anaconda Copper Mining Co.*, 31 F Supp. 571.

Operation and Effect

Provisions similar in character to those contained in this section and section 84-4156 are a limitation upon the power of

the treasurer to issue the tax deed, and render void any deed issued by him without requiring a compliance with them. The affidavit in particular is the basis upon which the treasurer is to act, and the conditions from which his power to issue the deed arises must appear by the affidavit. *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 527, 134 P 302.

The provision of this section requiring the purchaser of property sold for delinquent taxes to serve upon the owner or occupant thereof the written notice specified therein, thirty days before applying for the deed, is as binding upon a county as it is upon an individual. *Harrington v. McLean*, 70 M 51, 57, 223 P 912. See, also, *Hinz v. Musselshell County et al.*, 82 M 502, 513, 267 P 1113; *Shubat v. Glacier County et al.*, 93 M 160, 18 P 2d 614, and *Small v. Hull et al.*, 96 M 525, 531 et seq., 32 P 2d 4.

The purpose of notice required by this section to be given by the purchaser of real property on delinquent tax sale prior to application for tax deed is, *inter alia*, to advise the owner thereof of the amount he must pay in case he desires to redeem and therefore, the amount must be stated correctly; hence, where a county in its notice to an owner included in the total amount of taxes due those unlawfully levied for three years, the notice stated the amount due incorrectly and the court properly enjoined the county treasurer from issuing a tax deed to the purchaser. *Hinz v. Musselshell County et al.*, 82 M 502, 513, 267 P 1113. See, also, *Tilden v. Chouteau County et al.*, 85 M 398, 279 P 231, and *Morse v. Kroger et al.*, 87 M 54, 63, 285 P 185, and *Shubat v. Glacier County et al.*, 93 M 160, 18 P 2d 614.

The county treasurer is without authority to issue a tax deed unless the applicant has shown by his affidavit that, where the property is unoccupied, he posted notice of application therefor in a conspicuous place upon the property as required by this section and 2122, R. C. M. 1921 (since repealed), the affidavit constituting the basis upon which the treasurer acts. *Gallash v. Willis*, 90 M 148, 150, 300 P 569.

Where a tax deed was invalid for failure to give the owner the statutory notice of application therefor, such owner could not be held to have waived his right to question the validity of the deed nor acquiesced in the taking of his property by being represented at the county's public auction sale by an agent who bid on it, because he had no rights to waive by bidding on the property. *Kerr v. Small*, 112 M 490, 494, 117 P 2d 271.

Section 84-4132 provides that anyone entitled by law to redeem may do so "at

any time prior to the giving of the notice and the application for a deed." Section 84-4170 mentions "the date of the expiration of the period for redemption," but since under this section, the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in section 84-4170 is the time of the application for tax deed. *Hartman v. Nimmack*, 116 M 392, 397, 154 P 2d 279.

The fact that registered return receipts of notice of application for tax deed addressed to a corporation owner of the land held by the county under tax sale certificate were signed by the agent of the corporation, who was also an occupant, did not show service on him personally as occupant but merely showed knowledge in him aliunde the record, which, under the rule that the records alone can be considered and defects or omissions may not be corrected or supplied by anything dehors the record, was insufficient as a substitute for the statutory service upon him as an occupant required by this section. *Jensen Livestock Co. v. Custer County*, 113 M 285, 297, 124 P 2d 1013.

A party challenging tax deed on the ground that as occupant of the property he was entitled to notice of expiration of redemption period had the burden to establish that he was the person occupying the property and entitled to notice under this section and a person who had discontinued paying rent after 3 year lease, maintained no fences for more than 10 years and at time county made application for tax deed land was unenclosed where everyone, including plaintiff and neighbors, ran livestock is no occupant entitled to notice. *Van Voast v. Blaine County*, ___ M ___, 167 P 2d 563, 564.

Whether a person is entitled to notice of application for tax deed as a "person occupying the land" does not depend upon right of occupancy, but whether the use made of the land constituted actual occupancy. Evidence held not to establish plaintiff's occupancy so as to require that notice be given of application for deed. *Van Voast v. Blaine County*, ___ M ___, 167 P 2d 572, 573.

A notice of application for tax deed dated December 30, 1935, which recited that deed would be applied for on March 3, 1936, was sufficient under statute so far as record owner was concerned. *Milne v. Leiphart*, ___ M ___, 174 P 2d 805, 808.

Id. This section requires publication of notice of application for tax deed only in case post office address of record owner, mortgagee or assignee, be unknown.

Prerequisites to Reception of Tax Deed in Evidence

A prerequisite to the reception in evi-

dence of a tax deed is that it must be accompanied by the affidavit and notice of application therefor. *Farris v. Anaconda Copper Mining Co.*, 31 F Supp. 571, 579.

Publication of Notice Depends upon Knowledge of Address of Owner

Whether publication of notice of application for tax deed to real property is permissible under this section depends, not upon whether the owner of the property in question is known or unknown, or whether it is assessed to known or unknown owners, but upon whether the address of the owner is known, this being so whether the owner be known by name or unknown, the proceeding being in rem. *Sutter v. Scudder*, 110 M 390, 394, 103 P 2d 303.

Purpose

The purpose of this section is to warn the owner of the property and others interested, of the impending issuance of the deed and the termination of the right of redemption, coincident therewith; the giving of notice of application is jurisdictional, and where the requirements were not complied with but, on the contrary were practically all disregarded, the deed issued was void. *Sanborn v. Lewis and Clark County*, 113 M 1, 17, 120 P 2d 567.

Sufficiency of Notice as to Owner's Name, Tracts Included, Naming County

Under this section, it is not required that the name of the owner be given, and the fact that it is not addressed to anyone by name does not render it insufficient; the notice may include tracts of land belonging to more than one owner; held also, that a published notice of application for tax deed to mining claims signed by the county clerk, showing date of application, describing the claims by name and survey number, sufficient without naming the county where located, for anyone interested in ascertaining what property was involved. *Sutter v. Scudder*, 110 M 390, 396, 103 P 2d 303.

Tax Deed Not Derived from Fee, but Antagonistic Thereto

A tax deed is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from its operation; it is not derived from the fee but is antagonistic to it, and there is no privity between the holder of the one and the holder of the other. Since the statute relating to tax sales involves confiscation of property in ex parte proceedings, due process necessitates a strict compliance with the provisions of this section. Hence it may not be contended that a tax deed is good as to a served owner, though not good as to an unserved occupant. *Jensen Livestock Co. v. Custer County*, 113 M 285, 295, 124 P 2d 1013.

Title Conveyed by Deed Under This Section

Held, that the quantum of title conveyed by a tax deed issued in 1936 pursuant to this section is governed by section 84-4170 which applies equally to tax deeds issued upon notice under this section and to tax deeds issued after suit under sections 84-4162 et seq. *Cascade County v. Weaver et al.*, 108 M 1, 5 et seq., 90 P 2d 164.

References

Cited or applied as section 2651, revised codes, before amendment, in *Horsky v. McKennan*, 53 M 50, 58, 162 P 376; *Arnold et al. v. Custer County et al.*, 83 M 130, 139, 269 P 396; *State ex rel. Bell v. McCullough*, 85 M 435, 437, 279 P 246; *State ex rel. City of Billings v. Osten*, 91 M 76, 80, 5 P 2d 562; *Cavitt v. Seirson et al.*, ___ M ___, 175 P 2d 767, 769; *Miller v. Miller*, ___ M ___, 175 P 2d 182, 191.

Taxation—750.

61 C.J. Taxation § 1874.

51 Am. Jur. 942, Taxation, § 883.

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84-4152. (2209.1) Taking of tax deeds by counties, cities and towns—notice of application—order of governing body required. Whenever a county, city or town has become or hereafter becomes the purchaser of property sold for delinquent taxes, and is the holder of the certificate of sale when the time for redemption expires, the board of county commissioners, city or town council or commission at any time thereafter deemed proper may order and direct the county clerk, city or town clerk, to apply to the county, city, or town treasurer, as the case may be, for the issuance to the county, city or town, of a tax deed for such property, and it shall then be the duty of the county clerk, city or town clerk, to give or post and cause to be published the proper notice of the application for such tax deed and

to make the proper proof thereof, all in the manner required by section 84-4151. Provided, however, that the board of county commissioners, city or town council or commission, cannot be compelled to order and direct the county clerk, city or town clerk, to apply to the county, city or town treasurer, as the case may be, for the issuance of a tax deed within three years after the time for redemption has expired, unless the board of county commissioners, city or town council or commission deems it proper so to do.

History: En. Sec. 1, Ch. 92, L. 1927; amd. Sec. 1, Ch. 49, L. 1933.

Operation and Effect

Held, prior to amendment of this section by Ch. 49, L. 1933, in an action by holders of practically an entire issue of irrigation district bonds to compel county commissioners to apply for tax deeds to lands embraced in the district and bought by the county at delinquent tax sale, to enable the county to sell them and apply the proceeds to the payment of interest delinquent on the bonds, that the provision of this section to the effect that the board of county commissioners may at any time, after time for redemption of property sold on tax sale bought in by the

county, deemed proper, order the county clerk to apply for tax deeds thereto, is mandatory, and that the board is without discretion in the matter. *State v. Board of County Commrs.*, 86 M 595, 608, 285 P 932.

References

Arnold et al. v. Custer County et al., 83 M 130, 140, 269 P 396; *Ransom v. Pingel et al.*, 104 M 119, 122, 65 P 2d 616; *State ex rel. Jensen Livestock Co. v. Hyslop*, 111 M 122, 125, 107 P 2d 1088; *Hartman v. Nimmack*, 116 M 392, 396, 154 P 2d 279.

Taxation⌚748, 750.

61 C.J. Taxation §§ 1872, 1874.

84-4153. (2209.2) Validation of tax deeds heretofore issued counties, cities and towns. All tax deeds heretofore issued to counties, cities and towns, if in all other respects issued in conformity with law, shall be deemed and held to be legal, valid and subsisting deeds and sufficient in law to convey the legal title to the premises therein described to the county, city or town to which issued, and shall be received in evidence in all of the courts of this state, notwithstanding the fact that notice of application for any such deed was given or posted and caused to be published and proofs thereof made by the county, city or town treasurer, or by some person acting at his direction, or by some other person acting in behalf of the county, city or town, provided such notice was actually given or posted and caused to be published and proof thereof made by some officer of the county, city or town, or by some person acting in behalf of such county, city or town.

History: En. Sec. 2, Ch. 92, L. 1927.

Taxation⌚770.

61 C.J. Taxation § 1938.

84-4154. (2210) Redemption from tax sales. In all cases where real estate has been sold for delinquent taxes the purchaser at such tax sale, or his assignee, may, subsequent thereto, pay the subsequent taxes assessed against said land, and upon the redemption of said land from such tax sale, the redemptioner shall, in addition to the amount for which the said land was sold, with interest thereon, pay the subsequent taxes paid by the purchaser at such tax sale, or his assignee, with interest thereon at the rate of eight per cent per annum from the date of the payment of such taxes, and in all notices of application for tax deed the applicant shall state, in addition to the amount paid at the tax sale, the amount of subsequent taxes paid by the applicant or his assignee upon such land, with interest thereon at the rate of eight per cent per annum from the date of such payment, and no redemption shall be made until the amount of such sale with interest,

and such subsequent taxes and interest shall have been paid by the person seeking to redeem such lands.

History: En. Sec. 1, Ch. 98, L. 1913; re-en. Sec. 2210, R. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1939.

Operation and Effect

Under this section and section 84-4188, requiring a redemptioner to pay, in addition to the amount for which the property was sold, subsequent taxes paid by the purchaser, and section 84-4151, declaring that the notice which the purchaser must give when he applies for a tax deed must contain "the amount due," a notice of application for a deed to land sold for taxes assessed against it in 1921, including a statement of the amount due for taxes for the year 1920, did not state the correct amount due and was invalid and, therefore, the deed based thereon was likewise void. *Tilden v. Chouteau County et al.*, 85 M 398, 401, 279 P 231.

Where Federal Government Recovered Taxes Paid by Indians, after Cancellation of Fee Title Granted Without Their Application and Consent

Where patents were issued to federal government in trust for Indians to whom

lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians in paying tax had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. *Glacier County v. United States*, 99 F 2d 733, 735.

References

Thwing v. Weiser et al., 65 M 28, 31, 210 P 750; *Sanderson v. Bateman*, 78 M 235, 248, 253 P 1100; *Shubat v. Glacier County et al.*, 93 M 160, 167, 18 P 2d 614; *Sanborn v. Lewis and Clark County*, 113 M 1, 20, 120 P 2d 567.

Taxation 709(3).

61 C.J. Taxation § 1757.

51 Am. Jur. 953, Taxation, §§ 1097 et seq.

84-4155. (2211) Piecemeal redemption of land sold for taxes. Whenever any person, firm, co-partnership, corporation or association shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece or parcel of real estate, which said person, firm, co-partnership, corporation or association shall own or hold a mortgage or other lien against or when such person, firm, co-partnership, corporation or association shall be the owner of or have some interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the said real estate shall have been assessed and sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been separately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 1, Ch. 91, L. 1915; amd. Sec. 1, Ch. 73, L. 1919; re-en. Sec. 2211, R. C. M. 1921; amd. Sec. 1, Ch. 48, L. 1923; amd. Sec. 1, Ch. 17, L. 1941.

Operation and Effect

Held, under this section, that where a tract of land, not assessed in forty-acre divisions, had been sold for taxes, and the mortgagee, desiring to redeem a portion

of such land, demanded of the county treasurer that he compute and apportion the taxes delinquent upon each forty-acre tract, it was the legal duty of the treasurer to comply with the demand and that the trial court erred in refusing to compel him by writ of mandate to perform that duty. *State ex rel. Federal Land Bank v. Hays*, 86 M 58, 61 et seq., 282 P 32.

Id. Held, that this section, in requiring the county treasurer upon the request of one seeking to redeem from tax sale a portion of a tract of land on which he holds a mortgage and which portion had not been separately assessed, to compute and apportion the tax on the portion sought to be redeemed, is not unconstitutional as conferring the powers of an assessor upon the treasurer in a special and limited class of cases (sec. 26, art. V, const.), nor as authorizing levy and collection of taxes in any other manner than by general law (Id., sec. 11, art. XII).

Id. While the assessment roll, when completed and certified by the assessor as required by statute, may not be varied or contradicted by records made under the classification of lands act showing the full and true value of each forty-acre subdivision, such records are admissible in a

mandamus proceedings to compel a county treasurer to compute the tax due on a portion of a tract of land assessed in bulk so as to enable a redemptioner to redeem such portion from tax sale, under this section, for the purpose of showing that the information was available to the treasurer from the records to enable him to make such computation.

Suit as for Debt Not Authorized

Failure of owner of realty to pay taxes levied thereon does not ordinarily subject him to a suit as for a "debt" due within the ordinary meaning of that word. *Calkins v. Smith*, 106 M 453, 458, 78 P 2d 74.

Taxation—711.

61 C.J. Taxation § 1764 et seq.

51 Am. Jur. 957, Taxation, § 1102.

84-4156. (2212) Affidavit showing notice given—sum allowed therefor.

No deed of the property sold at a delinquent tax sale shall be issued by the county treasurer to the purchaser of the property until the proof of service of notice of application for tax deed has been filed with the county clerk and recorder as required by section 84-4151. Such purchaser is entitled to receive the sum of three dollars (\$3.00) for the service of said notice and the making of said affidavit required by section 84-4151, which sum of three dollars (\$3.00) must be paid by the redemptioner at the same time and in the same manner, as other costs, percentages, penalties and fees are paid.

History: En. Sec. 129, p. 114, L. 1891; re-en. Sec. 3896, Pol. C. 1895; re-en. Sec. 2652, Rev. C. 1907; re-en. Sec. 2212, R. C. M. 1921; amd. Sec. 1, Ch. 17, L. 1947.

Deed Void without Affidavit

The validity of a tax deed depends upon compliance with the statute authorizing its issuance; hence, held, in a quiet title action, that a deed, issued without the purchaser having filed an affidavit showing that notice of application had been given as required by this section, was unauthorized and therefore void. *B. Kesselheim, Inc. v. Cocklin*, 116 M 150, 151, 148 P 2d 945.

Operation and Effect

A tax deed is not even *prima facie* evidence that the holding of the certificate had, thirty days before applying for such deed, given the written notice in the manner required by this and the preceding section, prior to the amendment of the latter, of his intention to make such application. *Cullen v. Western etc., Title Co.*, 47 M 513, 527, 134 P 302; *Horsky v. McKennan*, 53 M 50, 58, 162 P 376.

Id. The reception of tax deeds in evidence, without proof of the fact that the holder of the certificates of purchase gave

the thirty-day notice of his intention to apply for the deeds, was error.

The affidavit required by this section to be filed by a purchaser of property at a delinquent tax sale who asks for a tax deed must be in strict compliance with the statute, and must inter alia show whether the property was occupied or not, and if occupied, that the person upon whom the notice was served was at the time occupying it. *Harrington v. McLean*, 70 M 51, 58, 223 P 912.

The county treasurer is without authority to issue a tax deed unless the applicant has shown by his affidavit that where the property is unoccupied, he posted notice of application therefore in a conspicuous place upon the property as required by this section and section 84-4151, the affidavit constituting the basis upon which the treasurer acts. *Gallash v. Willis*, 90 M 148, 150, 300 P 569.

Under this section the county treasurer has no jurisdiction to issue a tax deed until an affidavit showing that the notice of application for the deed as required by sec. 84-4151, including a statement whether or not the land is occupied has been given. If it is silent as to occupancy the deed is void. In determining the sufficiency of the tax title proceedings, the records alone can be considered, and de-

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facts or omissions may not be corrected or supplied by anything dehors the record. *Jensen Livestock Co. v. Custer County*, 113 M 285, 296, 124 P 2d 1013.

An affidavit filed by county clerk in county treasurer's office showing that he deposited in United States post office an envelope containing a copy of notice of application for tax deed, by registered mail, postage prepaid, addressed to record owner of the land, was sufficient proof to justify county treasurer in issuing tax deed. *Milne v. Leiphart*, ___ M ___, 174 P 2d 805, 808.

References

Arnold et al. v. Custer County et al., 83 M 130, 140, 269 P 396; *State ex rel. Bell v. McCullough*, 85 M 435, 437, 279 P 246; *Small v. Hull et al.*, 96 M 525, 531, 32 P 2d 4; *Sanborn v. Lewis and Clark County*, 113 M 1, 17, 120 P 2d 567; *Cavitt v. Seirson et al.*, ___ M ___, 175 P 2d 767, 768.

Taxation Ⓒ750.

61 C.J. Taxation § 1874.

84-4157. (2213) Form of tax deed—deed prima facie evidence of what. The form of a tax deed of an estate in real property, executed by a county treasurer, may be made in substance as follows:

This indenture, made by and between (insert name of treasurer), county treasurer of the county of (insert name of county), in the state of Montana, the party of the first part, and (insert name of grantee), the party of the second part, Witnesseth:

Whereas, there was assessed for the year (insert year), in the name of (insert name), that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of (insert amount) dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to (insert name of grantee), on the (insert day) of (insert month), A. D. (insert year), for the sum of (insert amount) dollars, and certificates of sale were duly issued and filed as required by law; and

Whereas, no redemption from said sale has been made, and the said grantee has given the necessary notice of application for tax deed as required by law;

Now, therefore, I, (insert name of treasurer), county treasurer of the county of (insert name of county), in the state of Montana, for and in consideration of the sum of (insert amount) dollars paid, do grant to (insert name of grantee), all the property situated in (insert name of county) county, state of Montana, described as follows: (here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this (insert day) day of (insert month), A. D. (insert year).

County treasurer of county,
state of Montana.

A tax deed executed in the form as provided in this section, when duly acknowledged and proved, is prima facie evidence that:

1. The property was assessed as required by law.
2. The property was equalized as required by law.
3. The taxes were levied in accordance with law.
4. The taxes were not paid.
5. That notice of tax sale was given and published, and property sold at the proper time and place as prescribed by law.
6. The property was not redeemed, and that the proper notice of application for deed has been served or posted as required by law.
7. The person who executed the deed was the proper officer.
8. Where the real estate was sold to pay taxes on personal property, that the real estate belonged to the person liable to pay the tax.

History: An. p. Sec. 1748, 5th Div. Comp. Stat. 1887; amd. Sec. 130, p. 115, L. 1891; re-en. Sec. 3897, Pol. C. 1895; re-en. Sec. 2653, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1919; re-en. Sec. 2213, R. C. M. 1921. Cal. Pol. C. Sec. 3786.

Operation and Effect

Where a tax deed shows on its face that it is void because the county was a competitive bidder at the sale, a grantee of the county cannot rely upon the presumption that official duty had been regularly performed, or that the property was sold as prescribed by law. *Rush v. Lewis and Clark County*, 36 M 566, 570, 93 P 943.

Under this section a tax deed is prima facie evidence that proper notice for application for the deed was served or posted as required by law. *Richardson v. Lloyd et al.*, 90 M 127, 131, 300 P 254.

In action to quiet title based on a tax deed, where record established that a duly

certified copy of tax deed was admitted in evidence, that it contained a recital that necessary notice of application for tax deed had been given, that such notice had been given, and that the deed was duly acknowledged and recorded, such a showing aided by the statutory presumptions of regularity entitled plaintiff to judgment, notwithstanding failure of record to show whether county clerk made and filed affidavit of proof of giving notice of application for tax deed. *Cavitt v. Sierson*, — M —, 175 P 2d 767, 769.

References

Cited or applied as section 2653, revised codes, before amendment, in *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 523, 134 P 302.

Taxation—754, 788, 789.

61 C.J. Taxation §§1880 et seq., 1948 et seq.

84-4158. (2214) Procedure in actions to quiet title to tax deed property.

In any action now pending, or hereafter brought to set aside or annul any tax deed, or to quiet title, or to determine the rights of such purchaser, including the county, or his successors, to real property claimed to have been acquired by reason of tax proceedings or a tax sale, the purchaser or his successor upon filing an affidavit may obtain from the court an order directed to the person claiming to own the property, or to have any interest in or lien upon said property, or a right to redeem the same, or claiming rights hostile to the tax title (which said person is herein, for convenience, called the true owner), commanding him to deposit in court, to the use of the tax purchaser or his successors, the amount of all taxes, interest and penalties which would have accrued if said property had been regularly and legally assessed and taxed as the property of said true owner and sold for delinquent taxes and was about to be redeemed by him, and the amount of all sums reasonably paid thereafter by said purchaser or his successors after three (3) years from the date of said tax sale in preserving said property or in making improvements thereon while in possession thereof, as the total amount of said taxes, interest, penalties and improvements is alleged

by the plaintiff and as shall appear in said order, or to show cause on a date to be fixed in said order, not exceeding thirty (30) days from the date thereof, why such payments should not be made. Said affidavit shall set forth the place of residence of said true owners and whether they are in the state of Montana, if known to the plaintiff, or that the same is not known to the plaintiff.

Said order shall be filed with the clerk and a copy served personally upon all persons shown in said affidavit to be residents of and in the state of Montana, and jurisdiction shall be acquired over all other persons by publishing the same once in a newspaper in the county, and by posting the same in three (3) public places in the county at least ten (10) days before the day fixed for the hearing and by leaving a copy with the county treasurer.

Upon the hearing of the order to show cause the court shall have jurisdiction to determine said amount and to make an order that the same be paid into court within a given time, not exceeding thirty (30) days after the making of said order. If such amount, when so determined, shall not be paid within the time fixed by said court, then said true owner shall be deemed to have waived any defects in the tax proceedings and any right of redemption, and thereupon, irrespective of any irregularities, defects or omissions or total failure to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices, including notices of redemption, or concerning tax deeds, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid), the title of such true owner shall not be quiet as against said purchaser or his successors, and a decree shall be entered in said action quieting the title of said purchaser or his successor as against said true owner.

If such payment shall be made into court, and said true owner shall be successful in said action and said tax proceedings shall be held void, said sum shall be paid to the purchaser or his successors. If said true owner shall not be successful in said action and the title of said purchaser or his successors shall be sustained, said money shall be returned to said true owner.

In actions to quiet title, when brought by the purchaser or the county, or their successors, several tracts of land contiguous or non-contiguous, and whether owned by different defendants, may be set forth in one complaint, and all persons claiming any title to or interest in or lien upon any of said premises, or any part thereof, although their said claims are independent and not in common, and do not cover the same tracts, may be joined as defendants. The procedure in said action shall follow, as near as may be, the procedure specified in sections 93-6203 to 93-6211.

In the final judgment the court shall also determine the rights growing out of any additional taxes on said property accruing or being paid by either party during the pendency of said suit and, in said suit, the court shall have complete jurisdiction to fix the amount of taxes which should have been paid and to determine all questions necessary in granting full relief, including the power, in appropriate cases to order any assessor or other tax officer to make and certify to the court a corrected or new assessment or

to do any other act or thing necessary to enable the court to do complete justice in the premises. Errors may be reviewed on appeal from the final judgment.

History: En. Sec. 131, p. 115, L. 1891; re-en. Sec. 3898, Pol. C. 1895; re-en. Sec. 2654, Rev. C. 1907; amd. Sec. 1, Ch. 50, L. 1909; re-en. Sec. 2214, R. C. M. 1921; amd. Sec. 1, Ch. 85, L. 1927; amd. Sec. 1, Ch. 29, L. 1947. Cal. Pol. C. Sec. 3787.

Actions to Set Aside Tax Deeds

Where the sole aim of an action is to do away with a tax deed as a claim of title adverse to the plaintiff, it is an action "to set aside or annul" a tax deed so as to make the provision of this section applicable, even though it may be termed one to quiet title. *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 529, 134 P 302.

Appeal Not Allowed from Order Relating to Deposit

Under this section, plaintiff in an action to set aside a tax deed is required to deposit in court the amounts therein provided for, before being permitted to maintain his action. If there be any question raised as to the amount so to be deposited, the court has jurisdiction to fix the amount after hearing on order to show cause. No appeal lies from such an order. Held, that the order is reviewable on appeal from the judgment in the main action to set aside the tax deed, and that the owner (redemption) is not estopped from contesting the correctness of the order by making the deposit as fixed by the court, to enable him to maintain his action. *Tilden v. Chouteau County et al.*, 85 M 398, 279 P 231.

"Conclusive Evidence of all Tax Proceedings" Effect of This Provision

Notwithstanding the provision of chapter 85, laws of 1927 (this section), that a duly executed tax deed is conclusive evidence of all tax proceedings up to the execution of the deed, the owner may in an action to quiet title show that notice of the application for tax deed was not served upon him as required by section 84-4151, such requirement being jurisdictional. *Small v. Hull et al.*, 96 M 525, 529, 32 P 2d 4.

Constitutionality

Held, that this section does not offend against the requirements of section 23, article V, of the constitution, relative to the contents of the title of an act, in that the provision for a deposit of taxes, interest and penalties, is germane to the matters expressed in the title, and therefore sufficient to meet the constitutional re-

quirement. *State ex rel. Souders v. District Court*, 92 M 272, 12 P 2d 852.

Id. Held, that, in view of the fact that the statutory proceedings for a sale of property for delinquent taxes are primarily designed as a means for collecting the tax against it, this section, requiring a deposit of taxes, etc., preliminary to action to set aside a tax deed, may not be held invalid under section 13, article XV, of the constitution, as destructive of vested rights, in that it imposes obligations with respect to a past transaction which were not required at the time the property was sold for taxes.

Held, that this section and chapter 162, laws of 1929 (since repealed), in so far as they purport to authorize a county to relinquish to the purchaser of lands at tax sale the amount of delinquent taxes, interest and penalty, required by order of court to be deposited by the original owner as a condition precedent to his right to maintain an action to set aside the tax deed, if the deed be set aside, are in conflict with section 39, article V, of the constitution, prohibiting the release by the state or a subdivision thereof of an obligation due it, and to that extent invalid. *Shull v. Lewis and Clark County*, 93 M 408, 415, 19 P 2d 901.

Id. In view of the above holding, all a purchaser of land from the county at tax sale, on attack of the deed by the original owner, may, under this section, demand as a deposit from such owner prior to trial is that which he has paid to the county, with interest, and which he has reasonably expended in preserving and improving the property, to be paid to the purchaser in case the deed be set aside, the plaintiff, in that event, being then required to pay to the county the balance of the taxes, penalty and interest due over and above what had been paid by the purchaser.

See also *Small v. Hull*, 96 M 525, 529, 32 P 2d 4.

Deposit Not Required by Cities

Held, that the deposit required by this section, is in the nature of security, and a city is exempt from the provisions thereof under sec. 93-8714 exempting municipalities from the provisions of any statute requiring parties in civil suits to post security, and therefore need not make such deposit as defendant in a quiet title action as a condition precedent to its right to appear and assert its lien for special improvement assessments payable after execution of tax deed. *Cascade County v. Weaver*, 108 M 1, 3, 90 P 2d 164.

Deposit of Taxes and Other Costs

A stipulation between the parties to an action to annul a tax deed to the effect that the party attacking its validity need not deposit in court as a condition precedent to his right to maintain the action the sums required by this section to be paid to the purchaser in case the deed be held invalid, is tantamount to a compliance with the requirement, the purchaser thereby waiving immediate deposit and the claimant agreeing to pay when called upon to do so if decree should go for him. *Glacier County v. Schlinski et al.*, 90 M 136, 300 P 270.

This section, authorizing the district court to order one seeking to set aside a tax deed or the quieting of title to real property acquired by tax sale, to make a deposit of accrued taxes, interest and penalties as a condition precedent to his right to maintain the action, held to apply to a proceeding to enjoin issuance of a tax deed. *State ex rel. Souders v. District Court*, 92 M 272, 12 P 2d 852.

Where a county, defendant in an action to set aside a tax deed, made no demand, under this section, that plaintiff deposit the taxes, interest, etc., due it, in advance of trial, the court erred in including them in an order made pursuant to a demand by its co-defendant, purchaser from the county. *Shull v. Lewis and Clark County*, 93 M 408, 415, 19 P 2d 901.

Id. Plaintiff in an action to set aside a tax deed may refuse to make the deposit authorized by this section where the order requiring it to be made embraces improper items, and raise the question on appeal from the judgment entered for default in making it.

Id. An order requiring plaintiff in an action to set aside a tax deed to deposit in court the moneys authorized by this section as a condition precedent to his right to maintain the action, is not the equivalent of a rendition of judgment and therefore the successful defendant was not required to serve his cost bill within five days after notice of the order.

Id. A purchaser of real property, obtained by a county at tax sale may, in an action by the former owner to set aside the deed, require the latter to deposit, under this section, the amount of taxes and installments of the purchase price paid by him after the purchase, and recover the same in the event plaintiff has judgment.

Id. Failure of a county, made co-defendant in an action to set aside a tax deed, to appear and demand that plaintiff as a condition to his right to maintain the action make a deposit of taxes, interest and penalty due, did not result in a remission

thereof, contrary to section 39, article V, constitution, the trial court, on retrial ordered, having power to protect the rights of the county in that behalf.

Where, in an action to quiet title to property acquired by tax deed brought by its former owner, the court required deposit made up of various items claimed by defendant without showing how such amount was arrived at, including the entire amount of taxes levied on the land after purchase from the county instead of only a one-fifth interest therein paid under contract of sale before commencement of the action, and there was no request for specific findings showing allowances and deductions nor exceptions taken to its findings, the supreme court on appeal will not disturb them. (See secs. 93-5305 and 93-5306). *Sanborn v. Lewis and Clark County*, 113 M 1, 19, 120 P 2d 567.

Under this section authorizing the holder of the tax title, upon filing of an affidavit, to obtain an order commanding the true owner to deposit taxes, interest and penalties, the affidavit is jurisdictional and must set forth the matters required by the statute. *Glacier County v. Frisbee*, 117 M 578, 580, 164 P 2d 171.

Lands Allotted to Indian Under Trust Patent

In an action to quiet title to lands allotted to an Indian but sold for delinquent taxes, and purchaser secured an order to show cause why owner should not deposit in court the taxes paid with penalty and interest, and on return day owner attacked both tax and tax proceedings, but order was issued without hearing, held, on application for writ of supervisory control, that appeal inadequate to review action of the court in making order requiring deposit without hearing the owner. *State ex rel. Jensen v. District Court*, 103 M 461, 464, 64 P 2d 835.

Misnomers or Other Mistakes

When land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to render it void or voidable, such mistake being in the nature of an informality or irregularity only. *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 523, 134 P 302.

The fact that a tax deed to real property erroneously recited that the property had been assessed to the wife of the owner whereas it had been assessed to her deceased husband, held, to have been no more than a clerical error insufficient to affect the validity of the deed. *Sutter v. Seunder*, 110 M 390, 397, 103 P 2d 303.

Operation and Effect

The clause of this section, making a tax deed conclusive evidence of all proceedings leading up to its execution, refers to acts and proceedings required at the hands of the officers charged with duties in relation to assessment and taxation, and not to something necessary to be done by the applicant for the deed. *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 527, 134 P 302.

As this section presupposes the issuance of a valid instrument, a tax deed which is void on its face, and therefore not a deed but a nullity, does not come within the purview of its provisions. *Horsky v. McKennan*, 53 M 50, 64, 162 P 376; *Lindeman v. Pinson*, 54 M 466, 471, 171 P 271.

While chapter 85, laws of 1927 (84-4158 and 84-4161), is entitled "An act for the validating of tax sales and deeds heretofore or hereafter made," etc., it merely prohibits an attack upon a tax deed for a defect in tax proceedings or tax sales after the expiration of one year subsequent to its issuance, and therefore has no effect upon a deed attacked in a suit instituted within the year. *Glacier County v. Schliniski et al.*, 90 M 136, 300 P 270.

Owner May Show Cause by Affidavit or Oral Testimony

Where required to show cause why he should not be required to pay all taxes, interest and penalties, owner, under this section, may show cause either by affidavit or by oral testimony. *State ex rel. Jensen v. District Court*, 103 M 461, 467, 64 P 2d 835.

Statute of Limitations

This section is a statute of limitations, and must be pleaded in the answer by one seeking to take advantage of it. *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 528, 134 P 302.

Under the rule that the legislature may amend a statute of limitations by shortening the time within which an action may be brought without impairing vested rights, if the statute as amended still offers a reasonable time within which to act, this section, fixing the time within which an action to set aside a tax deed may be brought at one year, instead of two as theretofore, after the issuance of the deed, or the passage of the act with relation to deeds theretofore issued, is not unconstitutional as impairing such rights, the time thus given being reasonable. *Couch v. Chase*, 91 M 234, 236 et seq., 6 P 2d 867.

Held, that the provision of this section

that an owner of realty sold for delinquent taxes may not maintain an action to set aside a tax deed thereto as irregular or void unless commenced within one year from date of its issuance, amounts to a taking of his property, without due process of law, where the affidavit required by section 84-4156 showed upon its face that notice of application for the deed had never been served upon the owner, though the deed recited that this had been done. *Small v. Hull et al.*, 96 M 525, 529, 32 P 2d 4.

Held, where tax deed proceedings were void for jurisdictional defects, statute requiring an action to set aside or annul a tax deed to be brought within two years from date of issuance of deed (this section before amendment) did not apply. *Miller v. Murphy*, — M —, 175 P 2d 182, 191.

Tender of Taxes, etc., Does Not Waive Right to Attack Deed

Defendant in an action by a county to quiet title to real property acquired by tax deed did not waive his right to attack the deed on the ground that the notice of application for deed did not correctly set out the amount due to bring about redemption, by his tender of a larger amount than that due, made pursuant to an order of court under chapter 85, laws of 1927 (84-4158 and 84-4161), requiring a deposit as a condition precedent to his right to be heard. *Glacier County v. Halvorson Mercantile Co.*, 93 M 520, 524, 19 P 2d 648.

Where Defense in Quiet Title Is Exemption from Tax Levies and Sale, and Redemption Question Not Raised by Pleadings

In an action to quiet title brought by purchaser of Indian land acquired by the county under tax deed, where trust patent issued to half-blood Indian allottee had been changed at his request to fee simple patent, and defense was based on the ground that the lands were exempt from state tax levies and sale upon non-payment thereof, and no question of redemption raised by the pleadings, held, that it was not necessary to pass upon the question of sufficiency of evidence to make a case under this section. *Chatterton v. Lukin*, 116 M 419, 424, 154 P 2d 798.

References

State et al. v. Board of Commissioners et al., 89 M 37, 276 P 1; *Smith v. Whitney*, 105 M 523, 526, 74 P 2d 450; *State ex rel. Lukin v. District Court et al.*, 113 M 621, 622, 139 P 2d 488.

51 Am. Jur. 947, Taxation, § 1089 et seq.

84-4159. Limitations on actions to set aside tax deeds. A tax deed duly recorded shall, after two (2) years from the date of (a) recording and (b)

also taking possession by the grantee, or his successor in interest, of the land conveyed, be treated and regarded as conclusive evidence of the regularity of the proceedings resulting in the issuance of such tax deed, from the assessment to the execution of such deed, both inclusive, and no action can be maintained to annul or to set aside such tax deed, or assert a title hostile thereto other than that the deed is void because no taxes were delinquent on said lands, or because redemption had been made from such tax sale, unless the action is commenced within two (2) years from and after the recording of such tax deed, and the taking of possession by the grantee, or his successor in interest, of the property conveyed; provided that as to any such tax deed heretofore issued, which has been recorded and possession taken by the grantee or his successor in interest, no action can be maintained to set aside or annul the same or to assert a title hostile thereto, other than that the deed is void because no taxes were delinquent on said lands, or because redemption had been made from the tax sale, unless the action is commenced within two (2) years from and after the passage of this act.

The time herein fixed shall, if the acts of (a) recording and (b) taking possession by the grantee are on different dates run from the event last occurring, provided that both acts shall be essential to start the running of this statute of limitations.

History: En. Sec. 1, Ch. 100, L. 1943.

84-4160. (2214.1) Validation of delinquent tax sales and sales of real property by counties. All sales heretofore made, or attempted to be made, by counties of real property purchased for taxes, and the deeds to purchasers and the contracts for sale of real property to purchasers, whether irregular or void for any failure to comply with any of the provisions of any statute or of any act of the legislature relating to the time or manner or form of publication of the notice of sale or to the time or place or manner of posting notices of sale of real property, are hereby confirmed; and said deeds and contracts, and any deed or contract executed under this section, shall vest in the purchaser, as of the date of said deed or contract, all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county in and to said real estate.

History: En. Sec. 1, Ch. 140, L. 1931.

Taxation 770.

References

61 C.J. Taxation § 1938.

Howard v. Newlon, 112 M 189, 190, 114 P 2d 272.

51 Am. Jur. 935, Taxation, §§ 1075-1077.

84-4160.1. (2214.2) Validation of tax deeds. No tax deed heretofore issued in this state shall be held invalid by reason of any defect in the form, substance or amounts stated to be due in the notice of application for tax deed, or for failure to give the full sixty (60) day notice required by section 84-4151, provided, however, at least thirty (30) days notice of the time when the deed was applied for was given. All tax deeds heretofore issued are legalized and declared to be valid and legal regardless of any error, defect, omission, irregularity, or failure to correctly state the amount due in the notice of application for tax deed. This act shall not apply to any case where, prior to its passage and approval, the owner of land or the party entitled to redeem shall pay or tender to the owner or holder of the tax deed

or the county treasurer of the county wherein the land described in said tax deed is situated, the amount actually due for taxes, penalty and interest at the time when said money is so tendered. In all cases where notice of the amount of taxes then due has been given to the parties interested and has been published in accordance with the laws then in effect and the taxes remain unpaid, tax deed may be issued under such proceedings, already so initiated and when so issued and delivered, such deeds shall be within the intent and purview of this act.

History: En. Sec. 1, Ch. 79, L. 1933; amd. Sec. 1, Ch. 171, L. 1947.

NOTE.—The cases in the annotations below were decided prior to the most recent amendment of this section, Ch. 171, L. 1947.

Constitutionality

Curative or validating statutes, such as this, validating tax deeds theretofore issued notwithstanding error in stating the amount due for taxes, interest and penalty in the notice of application for tax deed, do not violate sec. 27, art. III, of the state constitution relative to due process of law. *Howard v. Newlon*, 112 M 189, 191, 114 P 2d 272.

Error Held Cured by This Section

Held, in an action to quiet title to real property acquired by tax deed in which defendant attacked the deed on the ground that the county's notice of application for tax deed naming \$1036.25 as the amount payable for redemption purposes was erroneous, the error apparently involving \$3, that the error was cured under this section, thus rendering the deed valid, under the holding in *Martin v. Glacier County*, 102 M 213, 56 P 2d 742. *Howard v. Newlon*, 112 M 189, 191, 114 P 2d 272.

See also *Stoican v. Washburn et al.*, 112 M 603, 604, 120 P 2d 426.

Irregularities Cured by Validating Statute

Irregularities in sale of delinquent real

property not affecting jurisdiction, held cured by sec. 84-4124 validating certificates of sale, and this section, validating tax deeds therefore issued. *Martin v. Glacier County*, 102 M 213, 220, 56 P 2d 742.

Curative Statutes Do Not Remove Necessity to Give Notice of Application for Tax Deed

Since the legislature could not in violation of the due process of law clause of the constitution have done away with the necessity of giving notice of an application for tax deed prescribed by sec. 84-4151, contention in an action to set aside such a deed on the ground that notice had not been given, that failure to give notice was cured by this section as amended by ch. 105 and ch. 94 l. 1939, held without merit. *Kerr v. Small*, 112 M 490, 493, 117 P 2d 271.

Defects Cured by This Statute

Though this statute cures defects or mistakes in a notice of application for tax deed given pursuant to sec. 84-4151 so far as they relate to the amount due and required to be paid for redemption purposes, it does not validate defects and omissions in the service of the notice so flagrant as to amount to a complete failure to follow the requirements of that section in that behalf. *Sanborn v. Lewis and Clark County*, 113 M 1, 19, 120 P 2d 567.

84-4161. (2215) Title conveyed by deed—procedure to cure defects.

(1) All deeds heretofore or hereafter executed more than three years after any tax sale shall be deemed to convey to the grantee the absolute title to the lands described therein as of the date of the expiration of three years following the date of sale, including all the right, title, interest, estate, lien, claim and demand of the state of Montana, and of the county, in and to said real estate, and including the right of, if said tax deed or tax sale, or any of the tax proceedings upon which said deed may be based, shall be attacked and held irregular or void, to recover the unpaid taxes, interest and penalties which would accrue if said tax proceedings had been regular and it was desired to redeem said property, free of all encumbrances, except the lien for taxes which may have attached subsequent to the sale, and except when the land is owned by the United States or the state, in

which case it is prima facie evidence of the right of possession accruing as of the date of the expiration of such period for redemption.

(2) If any tax deed or deed purporting to be such has been or shall be issued more than three years and thirty days after any tax sale or attempted tax sale, the grantee may publish in any newspaper in the county published at the county seat or if none, in any other newspaper once a week for two weeks a notice entitled "a notice of claim of a tax title" which shall set forth a description of any property claimed to have been acquired by a tax deed, an estimate of the amount due thereon for taxes, interest and penalties, and a statement that for further particulars reference is made to the records in the office of the county treasurer; also the name of the person claiming to have obtained a tax deed to said property and the name of the person in whose name said property was assessed or taxed and a statement that demand is made that such person shall, within (30) thirty days after the first publication of said notice, pay to said claimant or to the county treasurer to his use the amount of the taxes, interest and penalties as the same may appear in the records of the county treasurer or bring a suit to quiet his title or to set aside said tax deed or deeds. Any mistake in the amount or in any name specified in said notice shall not invalidate the same.

If, within said period of (30) days, said taxes, interest, and penalties shall not have been paid or said suit brought, all defects in the tax proceedings and any right of redemption shall be deemed waived and thereupon, irrespective of any irregularities, defects, or omissions, or total failures to observe any of the provisions of the statutes of Montana regarding the assessment, levying of taxes, or sale of property for taxes, and the giving of notices including notices of redemption, whether or not such omissions or failures make said proceedings void (other than that the taxes were not delinquent or have been paid) the title to said property described in said notice and in the tax deed shall be valid and binding.

History: En. Sec. 132, p. 115, L. 1891; re-en. Sec. 3899, Pol. C. 1895; re-en. Sec. 2655, Rev. C. 1907; re-en. Sec. 2215, R. C. M. 1921; amd. Sec. 2, Ch. 85, L. 1927. Cal. Pol. C. Sec. 3788.

Encumbrances

The provision of this section is imperative that the tax deed in question extinguishes the lien of special improvement assessments, as it does all contract liens, and even prior tax liens. *State v. Jeffries*, 83 M 111, 121, 270 P 638.

Held, that section 89-1706, making bonds issued by an irrigation district a lien upon all lands in the district, thereby created a lien which constitutes an encumbrance against them, within the meaning of the term, "encumbrance" as used in this section, providing that a tax deed conveys to the grantee absolute title "free of all encumbrances." *State et al. v. Board of Commissioners et al.*, 89 M 37, 75 et seq., 296 P 1.

See also: *Stanley v. Jefferies*, 86 M 114,

124, 284 P 134; *Richardson v. Lloyd et al.*, 90 M 127, 132, 300 P 254.

On the theory that this section, providing in effect that a tax deed cuts off all prior tax liens, was impliedly amended by ch. 100, sec. 9, laws of 1929 (84-4170), declaring that such a deed shall be subject to the lien of any special or local improvements payable after the execution of the deed, the operation of the amendment is prospective, not retroactive. *State ex rel. City of Billings v. Osten*, 91 M 76, 78 et seq., 5 P 2d 562.

Implied Amendment

See last paragraph under Encumbrances.

Not Collateral Attack to Interpret Tax Deed

Though the rule against collateral attack is the same in an action where the validity of a tax deed is called in question as in the case of attack on a judgment, where the purpose of a proceeding is to secure an interpretation to be given a tax deed because of apparently conflicting pro-

visions of statutes as to the extent of title conveyed, there is no infraction of the rule. *Cascade County v. Weaver*, 108 M 1, 10, 90 P 2d 164.

Provisions Not Extinguished by Tax Deed; Injunction

Held, that since the negative easement created in favor of a townsite company by the restriction inserted in its deeds to lots sold by it prohibiting the sale of liquor upon the premises was appurtenant to its other lots and was taxable as such, a tax deed to the servient tenement—a lot sold under the restriction—though creating a new title free from all encumbrances, did not extinguish the easement but remained subject thereto. *Northwestern Improvement Co. v. Lowry*, 104 M 289, 303, 66 P 2d 792.

Id. Restrictions in deeds as to uses to which the property conveyed may not be put with the provision that if the grantee or his heirs or assigns shall at any time breach the condition, the conveyance shall be void and the premises shall at once revert to the grantor, are valid. Injunction lies to restrain a violation of a covenant against any such use.

Title

By the enactment of this section, providing that a tax deed conveys absolute title "free from all encumbrances except the lien for taxes which may have attached subsequent to the sale," a new title in the nature of an independent grant from the sovereignty is created, extinguishing all former titles and liens not expressly exempted from its operation. *State v. Jefferies*, 83 M 111, 116 et seq., 270 P 638.

A tax deed is not derivative but creates a new title in the nature of an independent grant from the sovereignty and strikes down the former owner's fee title and extinguishes all encumbrances including

oil leases and assignments of royalty interests. *Rist v. Toole County*, 117 M 426, 442, 159 P 2d 340.

Titles and Liens Extinguished

Under this section declaring that a tax deed to real property conveys absolute title "free from all encumbrances," such a deed is not derivative, but creates a new title in the nature of an independent grant from the sovereignty, extinguishing all former titles and liens not expressly exempted from the operation of the section, *Northwestern Improvement Co. v. Lowry*, 104 M 289, 300, 66 P 2d 792.

Implied Amendment of This Section as to Quantum of Title

Held: section 84-4170 applies equally to tax deeds issued after notice under sections 84-4151 et seq. and those issued after court action under sections 84-4162 et seq., and that this section (84-4161) was impliedly amended by section 84-4170 so that any tax deed issued after its enactment is subject to the lien of special improvement assessments levied thereafter. *Cascade County v. Weaver et al.*, 108 M 1, 4, 90 P 2d 164.

References

Tilden v. Chouteau County et al., 85 M 398, 402, 279 P 231; *State ex rel. Souders v. District Court*, 92 M 272, 12 P 2d 852; *Shull v. Lewis and Clark County*, 93 M 408, 415, 19 P 2d 901; *State ex rel. Malott v. Cascade Co.*, 94 M 394, 409, 22 P 2d 811; *Small v. Hull et al.*, 96 M 525, 529, 32 P 2d 4; *Blackford v. Judith Basin County et al.*, 109 M 578, 583, 98 P 2d 872; *State ex rel. Jensen Livestock Co. v. Hyslop*, 111 M 122, 132, 107 P 2d 1088; *Hartman v. Nimmaek*, 116 M 392, 395, 154 P 2d 279.

Taxation—778, 784, 785, 829.

61 C.J. Taxation §§ 1822 et seq., 2070.

84-4162. (2215.1) Action to procure tax deed—taxes to be paid. The purchaser of property sold for delinquent taxes or his assigns desiring a tax deed thereto may at his option, in addition to all other methods now provided by law, bring and maintain an action in the district court of the county in which such real property is situated, which said action shall be brought and except as herein provided shall be prosecuted as in other civil actions. Before bringing the action, the plaintiff, unless it be the county, shall pay all delinquent taxes assessed subsequent to the date he procured the certificate of sale which may then be due to the county.

History: En. Sec. 1, Ch. 176, L. 1933.

References

Cascade County v. Weaver, 108 M 1, 5, 90 P 2d 164; *State ex rel. Freebourn v. Yellowstone County*, 108 M 21, 27, 88 P 2d 6; *Blackford v. Judith Basin County*,

109 M 578, 581, 98 P 2d 872; *Sanborn v. Lewis and Clark County*, 113 M 1, 5, 120 P 2d 567.

Taxation—753.

61 C.J. Taxation § 1879.

84-4163. (2215.2) Commencement of action—parties—contiguous and noncontiguous tracts. The action shall be commenced by the filing of a verified complaint in which the parties so commencing the same shall be named as plaintiff and all persons having an interest in said property, or in any part thereof, either as owner, encumbrancer, or otherwise, whose interest shall appear of record in the office of the county clerk and recorder of the county in which the action is instituted, together with the county treasurer of said county, shall be named as defendants; if the county is the applicant, the action shall be brought in the name of the county clerk and recorder of said county; the complaint shall, among other things, set forth the description of the real property involved, the year in which the delinquent taxes were assessed, the amount for which the property was sold, the amount of taxes subsequently paid, the date of the sale of said property, the person to whom sold, the nature of the interest in each separate part of said land held by the respective defendants, or any of them, and the amount of money necessary to redeem the said lands from said sales. Several tracts of land, contiguous or noncontiguous, and whether owned by different defendants and whether sold at the same time, or at different times, may be set forth in one complaint and all persons claiming any title to, or interest in, or lien upon, any of said premises, or any part thereof, although their said claims are independent and not in common and do not cover the same tracts, may be joined as defendants. The rule of procedure outlined by this section shall apply to all actions brought to procure a tax deed hereunder and that may now be pending as well as all actions hereafter commenced under the provisions of this section.

History: En. Sec. 2, Ch. 176, L. 1933;
amd. Sec. 1, Ch. 100, L. 1937.

84-4164. (2215.3) Lis pendens. Upon the filing of the complaint, a notice of the pendency of said action shall be recorded in the office of the county clerk and recorder of the county in which the said action is pending, and the lis pendens so recorded shall be filed with the clerk of the court and shall become a part of the judgment roll of said action.

History: En. Sec. 3, Ch. 176, L. 1933.

Lis Pendens ⇨ 3(1).
38 C.J. Lis Pendens § 17.

84-4165. (2215.4) Summons—form—service. Upon the filing of the complaint, a summons must be issued under the seal of the said court in manner, form and in substance as in civil actions, with the additional statement: "This action is brought for the purpose of procuring a tax deed from the county treasurer of _____ county (name of county), Montana, for the lands and premises described as: (description of the land)." Service of said summons shall be made as in civil actions.

History: En. Sec. 4, Ch. 176, L. 1933.

84-4166. (2215.5) Defense to action—redemption of parcels. Any defendant may appear in said action within the time provided by law for appearances in civil actions and may set up any defense to the said action he may have, and may therein question the legality, validity or the sufficiency of any act had in connection with the assessment or sale of said

land; any defendant to said action may make redemption of said lands from said tax sale by paying the total amount of delinquent taxes and penalties, with interest thereon at eight per centum (8%) per annum from date of payment, which plaintiff shall have paid, together with costs of the action, and upon such payment a certificate of redemption therefrom shall be issued by the county treasurer of said county to the defendant so paying, and thereupon the said action shall be dismissed; whenever a defendant shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece, or parcel of real estate, which said person, firm, copartnership, corporation or association shall own or hold a mortgage or other lien against or have any interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the said real estate shall have been assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the said real estate sought to be redeemed, and upon which the taxes are sought to be paid, the same as if said property had been separately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned.

History: En. Sec. 5, Ch. 176, L. 1933.

References

Blackford v. Judith Basin County et al,
109 M 578, 583, 98 P 2d 782.

84-4167. (2215.6) Judgment by default not authorized—costs. No judgment in any such action shall be given by default but the court must require proof of the facts alleged in the complaint and other pleadings in said action. The court shall allow the successful party his costs to be fixed by the court including a reasonable attorney's fee in all cases where the county is not the applicant.

History: En. Sec. 6, Ch. 176, L. 1933.

84-4168. (2215.7) Judgment—order to issue tax deed to plaintiff—effect of judgment. The court by its judgment shall ascertain and determine by proper findings that the land was duly assessed, the year for which it was assessed, the amount of the assessment thereof, that said land was sold for the delinquent taxes, that due notice of the sale of the land was given as provided by law, the date of the sale thereof, the person to whom sold, the amount for which it was sold, the fact of the assignment of the certificate of sale, if assigned, that the said land nor any part thereof has not been redeemed from said sale, if such be the case, and shall order and direct the county treasurer of said county to issue a deed of conveyance to the plaintiff for said land, that the said judgment so entered shall be binding and conclusive upon the defendants therein named, and from and after the entry of the said judgment all defendants to said action shall be forever barred and enjoined from claiming or asserting any claim of any kind or nature whatsoever existing at the time of the entry of said judgment to the lands and premises described in said action or to any part or portion thereof.

History: En. Sec. 7, Ch. 176, L. 1933.

90 P 2d 164; Blackford v. Judith Basin
County et al., 107 M 578, 583, 98 P 2d 872.

References

Cascade County v. Weaver, 108 M 1, 9,

84-4169. (2215.8) Form of tax deed issued on filing copy of decree with treasurer. Upon filing with the county treasurer a certified copy of the decree, he must issue a tax deed for the real estate described in the judgment, which deed in substance shall be as follows: "This indenture, made by and between (insert name of treasurer), county treasurer of the county of (insert name of county), in the state of Montana, the party of the first part, and (insert name of grantee), the party of the second part, witnesseth:

Whereas, there was assessed for the year (insert year), in the name of (insert name), that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of (insert amount) dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to (insert name of grantee), on the (insert day) of (insert month) A. D., (insert year), for the sum of (insert amount) Dollars, and certificates of sale were duly issued and filed as required by law; and

Whereas, by virtue of a judgment and decree entered by the District Court of the Judicial District of the state of Montana in and for the county of (insert name of county) in an action wherein was plaintiff and defendant, a certified copy thereof being filed in my office, I, the said county treasurer aforesaid, am ordered and directed to issue this deed of conveyance for said lands.

Now, therefore, I, (insert name of treasurer), county treasurer of the county of (insert name of county), in the state of Montana, for and in consideration of the sum of (insert amount) dollars paid, do grant to (insert name of grantee), all the property situated in (insert name of county) county, state of Montana, described as follows: (here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this (insert day) of (insert month), A. D., (insert year).

.....
County treasurer of
County, state of Montana."

History: En. Sec. 8, Ch. 176, L. 1933.

Taxation 754 et seq.
61 C.J. Taxation § 1880 et seq.

84-4170. (2215.9) Effect of deed. The deed hereafter issued under this or any other law of this state shall convey to the grantee the absolute title to the lands described therein as of the date of the expiration of the period for redemption, free of all encumbrances and clear of any and all claims of said defendants to said action except the lien for taxes which may have

attached subsequent to the sale and the lien of any special, local improvement, irrigation and drainage assessments levied against the property payable after the execution of said deed, and except when the land is owned by the United States or this state, in which case it is prima facie evidence of the right of possession accrued as of the date of expiration of such period for redemption.

History: En. Sec. 9, Ch. 176, L. 1933; amd. Sec. 1, Ch. 63, L. 1937.

Operation and Effect

Section 84-4132 provides that anyone entitled by law to redeem may do so "at any time prior to the giving of the notice and the application for a deed." This section mentions "the date of the expiration of the period for redemption," but since under sec. 84-4151, the period of redemption does not expire until the application for tax deed has been duly made, it would seem that the date or time referred to in this section is the time of the application for tax deed. *Hartman v. Nimmack*, 116 M 392, 397, 154 P 2d 279.

Tax Deed Extinguishes Special Improvement Assessments Payable Before Its Execution

A general tax lien and a special improvement assessment lien are not of equal rank. Support of government is higher obligation than cost of local improvement. Where a special assessment for city improvement became delinquent on November 30, 1940, and was certified by the city to the county clerk on December 7, 1940, and by the county treasurer entered upon the tax rolls as a lien against the property, a county tax deed issued on December 23, 1940, extinguished the lien for the 1940 installment of the city special improvement assessment, because, under this section such assessment installment was payable before execution of the tax deed. *Hartman v. Nimmack*, 116 M 392, 395, 154 P 2d 279.

Waiver of Priority of General Tax Lien to That of Special Assessments

While the lien of general taxes is superior to that of special assessments, the

legislature has power to waive the priority of such lien and postpone it to that of special assessments. *Cascade County v. Weaver*, 108 M 1, 10, 90 P 2d 164.

Where Controlling on Quantum of Title Conveyed by Tax Deed; Constitution

Held, that the quantum of title conveyed by a tax deed issued in 1936 pursuant to notice under secs. 84-4151 et seq., is controlled by this section, impliedly amending sec. 84-4161 confining the exception to taxes as distinguished from special improvement assessments; this holding is expressly limited to special assessments made after enactment of this section, as against the suggestion that it is retroactive and offends against art. XV, sec. 13 of the constitution. *Cascade County v. Weaver*, 108 M 1, 4, 90 P 2d 164.

Where New Title in Nature of Independent Grant

Where land owner commenced suit to enjoin an irrigation district from assessing the land for interest on bonds of the district, held, that the bonds constituted an encumbrance upon the land within the district which was extinguished by the tax deed taken by the county, the deed creating a new title extinguishing all former titles and liens not expressly exempted from its operation. *Rosebud Land & Improvement Co. v. Carterville Irrigation District*, 102 M 465, 468, 58 P 2d 765.

References

Blackford v. Judith Basin County, 109 M 578, 587, 98 P 2d 872; *State ex rel. Jensen Livestock Co. v. Hyslop*, 111 M 122, 132, 107 P 2d 1088.

Taxation⇒778, 784, 785, 788(8).
61 C.J. Taxation § 1822 et seq.

84-4171. (2216) Assessment books, delinquent books, etc., prima facie evidence of what. The assessment book, duplicate assessment book, or delinquent list, or a copy thereof certified by the county clerk, showing unpaid taxes against any person or property, is prima facie evidence of the assessment, the property assessed, the delinquency, the amount of taxes due and unpaid, and that all the forms of the law in relation to the assessment and levy of such taxes have been complied with.

History: En. Sec. 133, p. 115, L. 1891; re-en. Sec. 3900, Pol. C. 1895; re-en. Sec. 2656, Rev. C. 1907; re-en. Sec. 2216, R. C. M. 1921. Cal. Pol. C. Sec. 3789.

Taxation⇒644.

61 C.J. Taxation § 1567.

84-4172. (2217) Comparison of delinquent list with unpaid assessment.

The county treasurer must annually, on the third Monday of February, attend at the office of the county clerk with the delinquent list, and the county clerk must then carefully compare the lists with the assessments of persons and property not marked "paid" on the assessment book, and when taxes have been paid he must note the fact in the appropriate column in the assessment book.

History: En. Sec. 141, p. 116, L. 1891;
re-en. Sec. 3908, Pol. C. 1895; re-en. Sec.
2664, Rev. C. 1907; re-en. Sec. 2217, R.
C. M. 1921.

Taxation 557(1).
61 C.J. Taxation § 1313 et seq.

84-4173. (2218) Oath administered to treasurer. The county clerk must then administer to the county treasurer an oath, to be written and subscribed in the delinquent list, that every person and all property assessed in the delinquent list on which taxes have been paid has been credited in the list with such payment.

History: En. Sec. 142, p. 117, L. 1891; 2665, Rev. C. 1907; re-en. Sec. 2218, R.
re-en. Sec. 3909, Pol. C. 1895; re-en. Sec. C. M. 1921. Cal. Pol. C. Sec. 3798.

84-4174. (2219) Final settlement of treasurer with clerk. The county clerk must then foot up the amount of taxes remaining unpaid, and credit the treasurer with the amount, and have a final settlement with him; and the delinquent list must remain in the county clerk's office.

History: En. Sec. 143, p. 117, L. 1891;
re-en. Sec. 3910, Pol. C. 1895; re-en. Sec.
2666, Rev. C. 1907; re-en. Sec. 2219, R. C.
M. 1921. Cal. Pol. C. Sec. 3799.

Taxation 557(1), 560.
61 C.J. Taxation §§ 1313 et seq., 1324.

84-4175. (2220) Treasurer's affidavit indorsed on list. At the time mentioned in section 84-4172 the treasurer must make an affidavit, indorsed on the list, that the taxes not marked "paid" have not been paid, and that he has not been able to discover any property belonging to or in possession of the persons liable to pay the sum whereof to collect them.

History: En. Sec. 144, p. 117, L. 1891; 2667, Rev. C. 1907; re-en. Sec. 2220, R. C.
re-en. Sec. 3911, Pol. C. 1895; re-en. Sec. M. 1921. Cal. Pol. C. Sec. 3800.

84-4176. (2222) Taxes, etc., illegally collected to be refunded. (1)

any taxes, percentum and costs, heretofore or hereafter, paid more than once or erroneously or illegally collected, may, by order of the board of county commissioners, be refunded by the county treasurer. Whenever any payment shall have been made to the state treasurer, as provided in section 84-4401, and it shall afterwards appear to the satisfaction of the board of county commissioners that a portion of the money so paid should be refunded as herein provided, said board of county commissioners may refund such portion of said taxes, penalties and costs so paid to the state treasurer, and upon the rendering of the report required by section 84-4402, the county clerk shall certify to the state auditor, in such form as the state auditor may prescribe, all amounts so refunded, and in the next settlement of the county treasurer with the state, the state auditor shall give the county treasurer credit for the state's portion of the amounts so refunded.

(2) When any part of the taxes, penalties or costs hereinbefore referred to were levied in behalf of any school district or municipal or other public

84-4176
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L. '51, c. 71
Sec. 1, p. 124

corporation, and collected by the county treasurer, the same may be refunded upon the order of the board of county commissioners.

(3) No order for the refund of any taxes, percentum or costs under this section shall be made except upon a claim therefor, verified by the person who has paid such tax, penalty or costs, or his guardian, or in case of his death by his executor or administrator, which claim must be filed within two years after the date when the second half of such taxes would have become delinquent if the same had not been paid.

(4) All refunds ordered to be paid by the board of county commissioners shall be paid by the county treasurer out of the general fund of the county and the county treasurer shall then make such transfers from other county funds and from state, school district, and other public corporation funds in his possession as may be necessary to reimburse the county general fund for payments made therefrom on account of such other funds.

History: En. Sec. 145, p. 117, L. 1891; re-en. Sec. 3913, Pol. C. 1895; re-en. Sec. 2669, Rev. C. 1907; re-en. Sec. 2222, R. C. M. 1921; amd. Sec. 1, Ch. 201, L. 1939. Cal. Pol. C. Sec. 3804.

Constitutionality

The decision in *Yellowstone Packing & P. Co. v. Hays*, 83 M 1, 268 P 555, declaring the portion of this section unconstitutional with reference to refunds by the state auditor to the county treasurer, reaffirmed. *Christofferson v. Chouteau County*, 105 M 577, 586, 74 P 2d 427.

Erroneous and Illegal Assessments Distinguished

An erroneous assessment occurs when the taxing officers have power to act but err in the exercise of that power, and an illegal assessment takes place when they have no power to act at all. *Christofferson v. Chouteau County*, 105 M 577, 582, 74 P 2d 427.

"Erroneously Collected" Taxes

Decisions heretofore holding that Secs. 84-4502, 84-4504 and 84-4505 repeal this section as to all cases for which they provide an exclusive remedy, leaving open to the taxpayer the equitable remedy of injunction or legal remedy of suit under protest, were inadvertently made with reference to taxes "erroneously collected", as distinguished from taxes "illegally collected". (See *First National Bank v. Sanders County*, 85 M 450, 279 P 247, considering the history of this section at length, and *First National Bank v. Beaverhead County*, 88 M 577, 294 P 956). *Christofferson v. Chouteau County*, 105 M 577, 581, 74 P 2d 427.

Means Cancellation of Lien Against the Land, Not Obligation Due the State

Taxes are not levied upon the property but upon the person; while the property

which the person owns is used to determine the amount of the tax he shall pay, it is after all the person who pays the tax; he is liable. The property, under our statutes, is security for the payment (*Ford Motor Co. v. Linnane*, 102 M 325, 57 P 2d 803). Art. V, sec. 39, constitution, prohibits the cancellation of an obligation due the state, and the authority of the legislature to authorize cancellation of taxes in the sense of releasing taxpayer's obligation to pay, is doubted, however the statute may be properly construed to mean the cancellation of the lien against the land. *Christofferson v. Chouteau County*, 105 M 577, 583, 74 P 2d 427.

"Paid More Than Once"

The portion of this section relating to taxes "paid more than once" must be deemed a special statute on the subject; where the board of county commissioners took no action on a claim for more than two years, the remedy by court action was available to the claimant, and in such action plaintiff is entitled to interest on the unlawful tax from the date of payment, even though plaintiff, to avoid the imputation that the payment made was voluntary, made it under protest. (See *Christofferson v. Chouteau County*, 105 M 577, 581, 74 P 2d 427.) *Williams v. Harvey*, 91 M 168, 171, 6 P 2d 418.

Purpose

Held, that the purpose of this section providing for refund of taxes erroneously collected, is to do justice in a class of cases where the application of the doctrine of caveat emptor or the common-law rule that where taxes are voluntarily paid they may not be recovered, will work a hardship to one who has paid money which it is inequitable for the county to retain. *Christofferson v. Chouteau County*, 105 M 577, 584, 74 P 2d 427.

Remission or Compromise of Taxes

Under this section authorizing the board of county commissioners to refund taxes when paid more than once or erroneously or illegally collected, it is without power to remit taxes which have never been paid or compromise delinquent taxes, and under section 39, of article V, of the state constitution, forbidding the release, remission or extinguishment of any obligation due the state or a municipal corporation therein, except by payment thereof in to the proper treasury, the legislature may not confer such power. *Yellowstone Packing etc. Co. v. Hays*, 83 M 1, 10, 268 P 555.

Operation and Effect

To authorize recovery under this section there must have been unwarranted or illegal action on part of taxing officials. *North Butte Mining Co. v. Silver Bow County*, ___ M ___, 169 P 2d 339, 340.

Id. Where mining company furnished statement to county of its gross yield, erroneously including the bonus or subsidy received from the government because of mistake of law, and paid taxes based on that statement without protest, mining company was not entitled to recover the taxes under this statute.

84-4177. Concurrent remedies. All acts and parts of acts in conflict herewith are hereby repealed, but none of the provisions of this act shall be deemed or construed to be in conflict with the provisions of sections 84-4502 to 84-4505, inclusive, of this code, but this act and the provisions of such sections shall provide and afford concurrent remedies.

History: En. Sec. 2, Ch. 201, L. 1939.

84-4178. (2223) When property assessed more than once. When the treasurer discovers that any property has been assessed more than once for the same year, he must collect only the tax justly due and make return of the facts under affidavit, to the county clerk.

History: En. Sec. 146, p. 117, L. 1891; re-en. Sec. 3914, Pol. C. 1895; re-en. Sec. 2670, Rev. C. 1907; re-en. Sec. 2223, R. C. M. 1921. Cal. Pol. C. Sec. 3805.

County Treasurer—Double Tax

If under ch. 72, l. 1937, amending secs. 53-107, 53-114, 53-116, 53-117, 53-118, and 84-406, relating to registration, licensing and taxation of motor vehicles, double taxation of the same vehicle should result under certain conditions, once in the hands of the dealer and once in the hands of the purchaser, it is the duty of the county treasurer, under this section to collect only the tax justly due. *Wheir v. Dye*, 105 M 347, 360, 73 P 2d 209.

84-4179. (2224) Land irregularly assessed, etc., not to be sold. If the treasurer discovers before the sale that on account of irregular assessment,

References

Cited and construed as section 2669, revised codes, in *Anaconda Copper Min. Co. v. Ravalli*, 52 M 422, 426, 158 P 682.

Taxation—§821(1-3).

61 C.J. Taxation § 2076.

51 Am. Jur. 1005, Taxation, §§ 1167 et seq.

Right to interest on tax free bonds. 57 ALR 357.

Mortgagee's right to recover taxes paid to protect his security as affected by invalidity of mortgage. 84 ALR 1371.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Permissive or mandatory character of legislation providing for refund of taxes illegally assessed or collected. 103 ALR 817.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Assignability of claim for tax refund, and rights of assignee in respect thereof. 134 ALR 1202.

Operation and Effect

The provisions contained in the two preceding sections, and others of like import, are intended to secure the collection of lawful revenue, and to protect the owner whose property is made to bear more than its just proportion of the burden of taxation, and were not enacted to secure immunity from taxation to any one. *Anaconda Copper Min. Co. v. Ravalli*, 52 M 422, 426, 158 P 682.

References

State ex rel. *Sadler v. Evans*, 106 M 286, 290, 77 P 2d 394.

Taxation—§550.

61 C.J. Taxation § 1304 et seq.

or of any other assessment, any land ought not to be sold, he must not offer the land for sale, and the board of county commissioners must cause the assessor to enter the uncollected taxes upon the assessment book of the next succeeding year, to be collected as other taxes entered thereon.

History: En. Sec. 147, p. 118, L. 1891; Taxation⌚631.
re-en. Sec. 3915, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation § 1533 et seq.
2671, Rev. C. 1907; re-en. Sec. 2224, R. C.
M. 1921. Cal. Pol. C. Sec. 3806.

84-4180. (2225) What mistakes do not affect sale of property for taxes.

When land is sold for taxes correctly imposed as the property of a particular person, no misnomer of the owner, or supposed owner, or other mistake relating to the ownership thereof affects the sale or renders it void or voidable.

History: En. Sec. 148, p. 118, L. 1891; re-en. Sec. 3916, Pol. C. 1895; re-en. Sec. 2672, Rev. C. 1907; re-en. Sec. 2225, R. C. M. 1921. Cal. Pol. C. Sec. 3807.

Operation and Effect

This section does not apply to personal property. *Birney v. Warren*, 28 M 64, 67, 72 P 293.

Where land is sold as the property of a particular person for taxes which have been correctly imposed upon the land, no misnomer or other mistake relating to the ownership thereof affects the sale to

render it void or voidable, such mistake being in the nature of an informality or irregularity only. *Cullen v. Western Mortgage & Warranty Title Co.*, 47 M 513, 524, 134 P 302.

References

Cited or applied as section 3916, political code, in *Cobban v. Hinds*, 23 M 338, 349, 59 P 1.

Taxation⌚692.

61 C.J. Taxation § 1680.

84-4181. (2226) Collection of taxes from persons assessed, but removed to another county. If any person removes from one county to another after being assessed on personal property, the treasurer of the county in which he was assessed may sue for and collect the same in the name of the county where the assessment was made.

History: En. Sec. 149, p. 118, L. 1891; Taxation⌚585.
re-en. Sec. 3917, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation § 1377.
2673, Rev. C. 1907; re-en. Sec. 2226, R. C.
M. 1921. Cal. Pol. C. Sec. 3808.

84-4182. (2227) Evidence on trial of suit for such taxes. On the trial a certified copy of the assessment, signed by the county clerk of the county where the same was made, with the affidavit of the treasurer thereto attached, that the tax has not been paid, describing it as on the assessment book or delinquent list, is prima facie evidence that such tax and the per centum are due, and entitles him to judgment, unless the defendant proves that the tax was paid.

History: En. Sec. 150, p. 118, L. 1891; Taxation⌚593(3).
re-en. Sec. 3918, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation § 1403.
2674, Rev. C. 1907; re-en. Sec. 2227, R. C.
M. 1921. Cal. Pol. C. Sec. 3809.

84-4183. (2228) Allowance and payment of expense of such proceeding. The treasurer and county clerk must allow the expenses of collecting such tax, and permit a deduction thereof from the amount collected, if they do not exceed one-third of the amount of the tax collected.

History: En. Sec. 3919, Pol. C. 1895; Taxation⌚598.
re-en. Sec. 2675, Rev. C. 1907; re-en. Sec. 61 C.J. Taxation § 1407.
2228, R. C. M. 1921.

84-4184. (2229) Protest against sale requisite, when assessment void in part, to invalidate sale or grant thereunder. Whenever property is advertised for sale for the nonpayment of delinquent taxes, and the assessment is valid in part and void for the excess, the sale must not for that cause be deemed invalid, nor any grant subsequently made thereunder be held to be insufficient to pass a title to the grantee, unless the owner of the property, or his agent, not less than six days before the time at which the property is advertised to be sold, delivers to the treasurer a protest in writing, signed by the owner or agent, specifying the portion of the tax which he claims to be invalid, and the ground upon which such claim is based.

History: En. Sec. 151, p. 118, L. 1891; Taxation 692.
 re-en. Sec. 3920, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation § 1680.
 2676, Rev. C. 1907; re-en. Sec. 2229, R. C.
 M. 1921.

84-4185. (2230) Duty of treasurer on delivery of such protest. In case any owner of property advertised to be sold for delinquent taxes, at least six days before the time advertised for the sale to take place, delivers to the county treasurer his protest in writing against such sale, signed by himself or his agent, claiming that the assessment is void in whole or in part, and if in part only, for what portion, and in either case specifying the grounds upon which such claim is founded, it is the duty of the treasurer either:

1. To sell the property assessed for the whole amount appearing upon the duplicate assessment book; or

2. Withdraw the property from sale, and report the case to the board of county commissioners for its direction in the premises; and in such case the board may either direct the foreclosure of the lien of such tax by action, which proceeding is hereby authorized to be had, or direct the treasurer to proceed with the sale.

History: En. Sec. 152, p. 119, L. 1891; Taxation 619.
 re-en. Sec. 3921, Pol. C. 1895; re-en. Sec. 61 C.J. Taxation § 1527.
 2677, Rev. C. 1907; re-en. Sec. 2230, R. C.
 M. 1921.

84-4186. (2231) Assessment of property on which a tax sale certificate has been purchased by county and adjournment of sale thereof. In case a tax sale certificate on property assessed for taxes is purchased by the county, or otherwise, pursuant to provisions of section 84-4124, it must be assessed for taxes the next year in the same manner as if it had not been so purchased. If the taxes resulting from such assessment are not paid when such taxes become due, said property shall again be sold, in manner as above described, and said assessment of such property, and the sale of same, when the said taxes have not been paid upon coming due, or the property redeemed, shall be continued until the time when such property shall have been redeemed from such sales; provided, however, that no tax deed shall issue to any purchaser, other than the county under said sales, until the applicant for such tax deed shall have paid and discharged all taxes, penalty and interest accumulated at the time of such application. Providing further that purchasers of certificates of tax sale, for years subsequent to the oldest outstanding tax sales certificate, shall have the same privilege of redemption, of such oldest outstanding tax sales certificate, as is the privi-

lege of the original owner of the property. Nothing herein contained shall be construed to apply to holders of tax certificates, other than counties, at the time this act becomes effective.

History: En. Sec. 153, p. 119, L. 1891; re-en. Sec. 3922, Pol. C. 1895; re-en. Sec. 2678, Rev. C. 1907; re-en. Sec. 2231, R. C. M. 1921; amd. Sec. 1, Ch. 54, L. 1937. Cal. Pol. C. Sec. 3813.

Operation and Effect

The fact that the treasurer intends to violate this and the succeeding section, by exposing for sale, for the delinquent taxes of one year, part of the lands purchased by the county at the sale for the taxes of the preceding year, and yet unredeemed, does not entitle the owner of the equity

of redemption to an injunction. Cobban v. Hinds, 23 M 338, 350, 59 P 1.

References

Sanderson v. Bateman, 78 M 235, 248, 253 P 1100; Hinz v. Musselshell County et al., 82 M 502, 513, 267 P 1113; Tilden v. Chouteau County et al., 85 M 398, 402, 279 P 231; Morse v. Kroger et al., 87 M 54, 62, 285 P 185; State ex rel. Souders v. District Court, 92 M 272, 12 P 2d 852.

Taxation 679(3, 5), 697(6).
61 C.J. Taxation §§ 1671, 1676.

84-4187. (2232) No sale unless directed by board of county commissioners. In case an assessment is made under the provisions of the next preceding section and the lands are not redeemed from a previous sale had under section 84-4124, as provided by law, no sale must be had under the assessment authorized by the next preceding section unless directed by the board.

History: En. Sec. 154, p. 119, L. 1891; re-en. Sec. 3923, Pol. C. 1895; re-en. Sec. 2679, Rev. C. 1907; re-en. Sec. 2232, R. C. M. 1921. Cal. Pol. C. Sec. 3814.

References

Cited or applied as section 3923, polit-

ical code, in Cobban v. Hinds, 23 M 338, 350, 59 P 1; Hinz v. Musselshell County et al., 82 M 502, 267 P 1113.

Taxation 679(5).

61 C.J. Taxation § 1676 et seq.

84-4188. (2233) Conditions of redemption of property sold to county. In case property is sold to the county as purchaser, pursuant to section 84-4124 of this code, and is subsequently assessed, pursuant to section 84-4186 of this code, no person must be permitted to redeem from such sale, except upon payment also of the amount of such subsequent assessment, costs, fees, and interest.

History: En. Sec. 155, p. 120, L. 1891; re-en. Sec. 3924, Pol. C. 1895; re-en. Sec. 2680, Rev. C. 1907; re-en. Sec. 2233, R. C. M. 1921. Cal. Pol. C. Sec. 3815.

Operation and Effect

Under section 84-4154, and this section, requiring a redemptioner to pay, in addition to the amount for which the property was sold, the subsequent taxes paid by the purchaser, and section 84-4151, declaring that the notice which the purchaser must give when he applies for a tax deed must contain the amount due, a notice of application for a deed to land sold for taxes assessed against it in 1921, including a statement of the amount due for taxes

for the year 1920, did not state the correct amount due and was invalid and therefore, the deed based thereon was likewise void. Tilden v. Chouteau County et al., 85 M 398, 402, 279 P 231.

References

Sanderson v. Bateman, 78 M 235, 248, 253 P 1100; Hinz v. Musselshell County et al., 82 M 502, 513, 267 P 1113; Morse v. Kroger et al., 87 M 54, 62, 285 P 185.

Taxation 709(2, 3).

61 C.J. Taxation §§ 1755 et seq., 1757.

51 Am. Jur. 953, Taxation, §§ 1097 et seq.

84-4189. (2234) Distribution of such redemption moneys, accounts, etc. Whenever property sold to the county, pursuant to the provisions of this chapter, is redeemed as herein provided, the moneys received on account of such redemption must be distributed as follows:

The original tax and the penalty and interest thereon paid in redemption must be apportioned and prorated to the credit of all the various funds, including state, county, school, school district, city, or town in the ratio of their respective shares of the original tax. The county treasurer must keep an accurate account of all money paid in redemption of property sold to the county, and must, on the first Monday of June in each year make a detailed report, verified by his affidavit, of each account, year for year, to the state auditor, in such form as the state auditor may desire. Whenever the county receives from the county treasurer any grant of property so sold for taxes, the same shall be recorded, at the request of the county treasurer, free of charge, by the county clerk, and shall be immediately reported by the county treasurer to the board of county commissioners.

History: En. Sec. 156, p. 120, L. 1891; re-en. Sec. 3925, Pol. C. 1895; re-en. Sec. 2681, Rev. C. 1907; re-en. Sec. 2234, R. C. M. 1921; amd. Sec. 1, Ch. 164, L. 1929. Cal. Pol. C. Sec. 3816.

Operation and Effect

Held, that this section prior to amendment providing that where property is redeemed from tax sale the original tax and twenty per cent paid in redemption shall be apportioned between the state and county, the balance to go to the county, applies only to moneys collected on payment of delinquent taxes levied for state and county purposes, and not to those paid on taxes levied for the support of, inter alia, school districts, but that as to such moneys the latter are entitled to their proportionate shares. School District No. 12 v. Pondera Co., 89 M 342, 345 pt seq., 297 P 498.

Id. If this section were construed literally, to-wit, as entitling the county to all interest and penalty paid on redemption from tax sales, to the exclusion of other political subdivisions interested therein, the statute would be unconstitutional as offending against the equal protection clause of the constitution, in that it would relieve the county of a part of the burden of taxation to the detriment of such other subdivisions.

References

State v. McFarlan, 78 M 156, 159, 252 P 805; Sanderson v. Bateman, 78 M 235, 248, 253 P 1100.

Taxation Ⓒ 724.

61 C.J. Taxation § 1791 et seq.

84-4190. Sale of county tax deed lands—procedure—preferential repurchase rights. Whenever the county shall hereafter acquire any land by tax deed, it shall be the duty of the board of county commissioners within six (6) months after acquiring title, to make and enter an order for sale of such lands at public auction at the front door of the courthouse, provided, however, that thirty (30) days' notice of such sale shall be given by publication in a newspaper printed in the county. Such notice shall be published once a week for three (3) consecutive weeks, and shall be posted in at least three (3) public places in the county. Notice posted and published shall be signed by the county clerk and one (1) notice may include a list of all lands to be sold, the appraised value of same, and the time and place of sale, and no sale shall be made for a price less than the fair market value thereof, as determined and fixed by the board of county commissioners prior to making the order of sale, which value shall be stated in the notice of sale. Provided further, that at any time before the time fixed for the first offering of said property for sale, notice of which has been given as above provided, the taxpayer or successor in interest, or legal representative, whose property shall hereafter be deeded to the county, may purchase such property subject to the reservations hereinafter provided, by payment to the county of the full amount of the taxes, penalties and interest due on said land at the time

of taking said tax deed, and such purchase and payment may be effected by an installment contract with annual payments as hereinafter provided.

(a). That all persons whose property has heretofore been deeded to the county, or the successors in interest of such persons, or legal representatives, who have acquired any preferential right to purchase such property, prior to the date fixed for sale of such property, or while the title to the same remains in the name of the county, under the provisions of section 2235, Revised Codes of Montana, 1935, as amended by chapter 181, session laws of Montana, 1939, are hereby given six (6) months after the effective date of this act in which to exercise such preferential right to so re-purchase said property in accordance with the provisions of said laws above herein referred to, and if such rights are not so exercised within said period of six (6) months, said preferential rights shall terminate and thereafter forever be barred.

(b). The county clerk and recorder of each and every county of the state of Montana, if such clerk and recorder's county has heretofore taken county deeds to property in which such preferential rights exist (or may exist), shall cause to be published and circulated at least once a week in such county, a full, true and correct copy of sub-section (a) of this act, said notice to also include the effective date of this act. Such clerk and recorder shall cause said notice to be published once a week for three (3) consecutive weeks, in such paper, and post three (3) copies of such notice in at least three (3) public places in the county; the first publication to be within thirty (30) days after the effective date of this act.

History: En. Sec. 1, Ch. 171, L. 1941; amd. Sec. 1, Ch. 144, L. 1945.

NOTE.—Ch. 171, L. 1941 repealed sec. 2235, R. C. M. 1935 which formerly governed the sale of unredeemed county tax deed property. The history of that section is as follows: En. Sec. 157, p. 120, L. 1891; re-en. Sec. 3926, Pol. C. 1895; re-en. Sec. 2682, Rev. C. 1907; amd. Sec. 1, Ch. 123, L. 1909; amd. Sec. 1, Ch. 18, L. 1919; re-en. Sec. 2235, R. C. M. 1921; amd. Sec. 3, Ch. 85, L. 1927; amd. Sec. 1, Ch. 162, L. 1929; amd. Sec. 1, Ch. 33, Ex. L. 1933; amd. Sec. 1, Ch. 181, L. 1939.

Sale of Tax-title Owned Land Without Notice to Lessee; Under Prior Statute

In an action to quiet title against former owner of tract of farm land, title to which had been acquired by county by tax deed, the former continuing in possession and farming it under a lease from the county containing provision that in case the county after two futile attempts to sell the property, should place it on sale, lessee should receive notice so as to enable him to buy it, authorized by section 2208.1 R. C. M. 1935, (repealed by sec. 10, Ch. 171, L. 1941) and another purchased it at

private sale without making inquiry of the occupant or inspection of the county records, he was not an innocent purchaser as against any rights of lessee under agreement. Deed ordered cancelled. *Berger v. Johnson*, 116 M 270, 273, 151 P 2d 586.

Owner's Right to Redeem

Where defendant county acquired land of plaintiff delinquent taxpayer by tax deed, and the latter offered to pay the delinquent taxes, penalty and interest the second time the land was offered for sale, but the commissioners refused the taxes and sold the land to another on the ground that the owner lost his preferential right for failure to exercise it on the first sale, held, in mandamus proceeding that under ch. 181, l. 1939 (since repealed) and this section et seq., the general policy of the law is to preserve the owner's right regardless of such prior failure and without any such proviso that it be deemed lost for prior failure to exercise it. *State ex rel. Johnson v. Garfield County*, 116 M 300, 302, 151 P 2d 481.

References

State ex rel. Engle v. District Court, ___ M ___, 174 P 2d 582.

84-4191. Terms of sale—sale contract—deed of conveyance. Such sale shall be made for cash or, in the case of real property, on such terms as the

board of county commissioners may approve; provided, however, that if such sale is made on terms at least twenty per cent (20%) of the purchase price shall be paid in cash at the date of sale and the remainder may be paid in installments extending over a period not to exceed five (5) years and all such deferred payments shall bear interest at the rate of four per cent (4%) per annum.

If a sale is made on terms, the chairman of the board of county commissioners shall execute a contract containing such terms as shall be provided by a uniform contract prescribed by the board of equalization and upon payment of the purchase price in full together with all interest which may become due on any installment or deferred payments, the chairman of the board of county commissioners shall execute a deed attested to by the county clerk to the purchaser, or his assigns, or such other instruments as shall be sufficient to convey all of the title of the county in and to the property so sold, provided that the county may reserve not to exceed six and one-fourth per cent (6¼%) royalty interest in the oil, gas, and minerals produced and saved from said land.

History: En. Sec. 2, Ch. 171, L. 1941.

84-4192. Land subject to taxation to purchaser—when. On the first Monday of March following the execution of such contracts or deed the land shall be subject to taxation in the name of the purchaser or his assignee and in the event the taxes are not paid and the same become delinquent said contract shall be subject to cancellation and all payments theretofore made shall be taken, treated, and regarded as rent for said property.

History: En. Sec. 3, Ch. 171, L. 1941.

84-4193. Unsold land—how disposed of—interest rate. In the event any of said lands are not sold at such public sale the county commissioners may at any time either again appraise, advertise, and offer the same at public auction or sell the same at private sale at the best price obtainable at not less than ninety per cent (90%) of the last appraised value and on such terms as may be agreed upon, provided the rate of interest on deferred payments shall be four per cent (4%) per annum and provided, further, that the terms other than price as to each class of land, grazing, farming, and irrigated, shall be uniform in each county.

History: En. Sec. 4, Ch. 171, L. 1941.

84-4194. Lease of lands not sold—royalty reserved in leases for mineral or oil and gas purposes—pooling agreement. Whenever such lands have been offered for sale at public auction and not sold, the county commissioners may, if deemed for the best interests of the county, lease said lands upon the best terms obtainable for farming, grazing, or for oil and gas development purposes, provided that such lease, when for farming land, shall not extend over a period longer than three (3) years, and when for grazing lands, such shall not extend over a period longer than five (5) years, except lands within a legally created or thereafter to be created grazing district when such lease may run for a period of not to exceed ten (10) years, provided, lands leased for all purposes may be subject to sale at the

discretion of the board of county commissioners during the term of the lease and leases shall be subject to all rules and regulations relative to land use policies or regulations to best advance public welfare and benefit, that may be adopted by the board of county commissioners with the advice of the county agricultural planning committee and provided, further, that the lease rental may vary according to the livestock grazing capacity of the lands leased as determined by the board of county commissioners, and when for mineral or oil and gas purposes, said lease shall be for such terms as the board of county commissioners shall deem to be for the best interest of the county, and reserve a royalty of twelve and one-half per cent (12½%) which shall include any royalty payable to any person other than the county.

When deemed in the best interest of the county, the county commissioners may enter into agreements for the pooling of acreage with others for unit operations for the production of oil or gas, or both, and for the apportionment of oil or gas royalties, or both, on an acreage or other equitable basis, and may modify existing leases and leases hereafter entered into with respect to delay rentals, delay drilling penalties and royalties in accordance with such pooling agreements, and such unit plans of operation; provided, however, that such agreements shall not change the percentages of royalties to be paid to the county from the percentages as fixed in its leases. The county commissioners may also, after any of said lands have been offered for sale and not sold when it is deemed for the best interest of the county, exchange said lands for other lands of equal value where the effect of such exchange would be to acquire land which could be leased or sold to better advantage.

History: En. Sec. 5, Ch. 171, L. 1941;
amd. Sec. 1, Ch. 82, L. 1943; amd. Sec. 1,
Ch. 48, L. 1945.

84-4195. Apportionment of proceeds of sales and leases. The proceeds of every such sale or lease shall be paid over to the county treasurer who shall apportion and distribute the same in the following manner:

(a) Upon a lease of the property the amount received as rent, royalty, or otherwise, including interest received on the payments under either a sale or lease shall be apportioned as provided in subdivision (d) hereof and shall be credited as earnings of tax deed property and not considered as a credit to tax deed accrued accounts, as in the case of the principal received from sales of tax deed lands.

(b) Upon a sale of such property the proceeds of each sale up to the amount of ten dollars (\$10.00) shall be credited to the county general fund to reimburse such for expenditures made therefrom in connection with the procurement of tax deed and holding sale.

(c) Upon a sale of the property if there be any amount remaining of such proceeds after the payment of the amount specified in subdivision (b) hereof and such remainder is in excess of the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty and interest, then so much of such remaining proceeds shall be credited to each fund or purpose, as the same would have received had such taxes been paid before becoming delinquent and all excess shall be credited to the general fund of the county.

(d) Upon such sale if there shall be any amount remaining of such proceeds after the payment of the amount specified in subdivision (b) hereof and such remainder is less in amount than the aggregate amount of all taxes and assessments accrued against such property for all funds and purposes, without penalty or interest, such proceeds shall be prorated between such funds and purposes in the proportion that the amount of taxes and assessments accrued against such property for each such fund or purpose bears to the aggregate amount of taxes and assessments accrued against such property for all funds and purposes.

History: En. Sec. 6, Ch. 171, L. 1941;
amd. Sec. 1, Ch. 81, L. 1943.

84-4196. Confirmation of oil and gas leases heretofore made. That all reservations of royalty interest in oil, gas, and minerals heretofore made or attempted to be made by counties in the sale of tax deed lands and all oil and gas leases heretofore made or attempted to be made by counties covering tax deed lands, whether or not irregular or void for any reason, are hereby confirmed and declared to be legal and valid, notwithstanding the provisions of any law to the contrary.

History: En. Sec. 7, Ch. 171, L. 1941.

84-4197. Sale of lands less than fifty dollar valuation and other lands. That property belonging to the county of the value of less than fifty dollars (\$50.00) and property of the county acquired by means other than by tax deed may be sold as provided by section 16-1009, and except so far as it may conflict with the provisions of this act, said section 16-1009 shall remain in force and effect. Nothing herein contained shall be construed as repealing sections 16-1132, 16-1133, 16-1134 and 16-1135.

History: En. Sec. 8, Ch. 171, L. 1941.

84-4198. Lessee of tax-deed lands has right within 30 days to purchase at appraised value. Whenever tax deed lands now held, or hereafter acquired, by any county of this state, have been leased pursuant to the provisions of section 84-4194, and thereafter the board of county commissioners shall receive an offer for the purchase of said lands under the provisions of section 84-4193, the said board shall by registered mail notify the lessee, who shall have a period of thirty (30) days after the mailing of such notice within which he may purchase the leased property at the appraised value thereof. Provided that nothing herein contained shall prohibit the board from, at any time, reappraising, readvertising and offering such land at public sale under the provisions of section 84-4190.

History: En. Sec. 1, Ch. 147, L. 1943.

84-4199. Validation of certain contracts for purchase of tax title lands. All installment contracts for the purchase of tax title lands heretofore entered into between any county and the former owner of such lands to which the county has taken tax deed, which contracts provide that deferred installments shall bear interest at the rate of four per cent (4%) instead of six per cent (6%) as provided by section 16-1009 are hereby validated and legalized and no such contract shall be held invalid by reason of the provisions thereof relating to interest.

History: En. Sec. 1, Ch. 9, L. 1941.

84-41-100. Validation of tax deeds notwithstanding failure to classify lands. No tax deed heretofore or hereafter issued in this state shall be held invalid, nor shall its legality be in any manner whatsoever affected by reason of the prior failure of the board of county commissioners of any county to provide for the classification of the lands in such county as required by sections 84-430 to 84-437. This enactment shall be retroactive and shall apply to all tax deeds heretofore as well as those hereafter issued under any law of the state of Montana providing a method of applying for and securing deed to lands sold for delinquent taxes. All tax deeds heretofore issued under the laws of Montana are hereby legalized and declared to be valid, notwithstanding that the lands thereby conveyed may not have been classified under the statutes herein referred to.

History: En. Sec. 1, Ch. 61, L. 1941.

84-41-101. (2235.1) Repealing and saving clause. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that this act is not intended, and nothing herein shall be deemed intended, either to repeal or displace chapter 89 of the laws of the nineteenth legislative assembly of the state of Montana. (Sections 89-1822 to 89-1829).

History: En. Sec. 2, Ch. 33, Ex. L. 1933.

Taxation⊕615.

61 C.J. Taxation § 1515 et seq.

84-41-102. (2235.2) Saving clause. Nothing herein contained shall be held or construed as an amendment or modification of sections 84-4140 through 84-4143.

History: En. Sec. 3, Ch. 33, Ex. L. 1933.

84-41-103. (2236) Suspension of taxes on property owned by persons in military or naval service. All taxes, whether on real or personal property, now due or hereafter to become due on property owned by any citizen of the state of Montana in the active military or naval service of the United States, shall be held in abeyance, and no proceedings taken for the collection thereof, and no penalties or interests shall be added thereto, until the expiration of the period of one year from and after the cessation of hostilities or discharge from military or naval service.

History: En. Sec. 1, Ch. 14, Ex. L. 1918;

Taxation⊕219.

re-en. Sec. 2236, R. C. M. 1921.

61 C.J. Taxation § 433 et seq.

84-41-104. (2237) Affidavit to be filed with county treasurer. To obtain the benefits of this act it shall be necessary for some person, on behalf of such person in the military or naval service, to file with the treasurer of the proper county an affidavit to the effect that the person against whom such taxes are charged is in such active military or naval service, which affidavit must be filed at or before the time when such taxes would become delinquent, and upon the filing thereof the treasurer shall make a notation upon his records to the effect that the collection of such taxes is suspended on account of the military or naval service of such taxpayer. But nothing in this act shall be so construed as to prevent such county treasurer from receiving payment of any such taxes whenever offered.

History: En. Sec. 2, Ch. 14, Ex. L. 1918;

Taxation⊕251.

re-en. Sec. 2237, R. C. M. 1921.

61 C.J. Taxation § 424 et seq.

CHAPTER 42

COLLECTION OF PERSONAL PROPERTY TAXES NOT A LIEN
ON REAL ESTATE—ROAD AND POOR TAXES

- Section 84-4201. Duty of assessor.
 84-4202. Duty of treasurer.
 84-4203. Mode of conducting seizure and sale.
 84-4204. Manner of conducting sale, etc.
 84-4205. Treasurer's charges and mileage for sale or seizure.
 84-4206. Title to such property vests in purchaser on payment.
 84-4207. Disposition of excess of proceeds over taxes, percentage and costs.
 84-4208. Unsold portion to remain at risk of owner.
 84-4209. Rate of taxation where property is taxable.
 84-4210. Treasurer's record.
 84-4211. Assessor to note report of property.
 84-4212. Repealed.
 84-4213. Treasurer's duty to collect road and poor taxes—seizure and sale of property—when road and poor tax to be paid.
 84-4214. Procedure for sale of property.

Tit. 84, C. 42
 (Vol. 1, P. 1253)
 C. 200 RCM'35
 Rel. Matter
 SL '49, C. 44
 Secs. 1-5
 PP. 110-111

Tit. 84, c. 42
 Rel. matter
 L. '51, c. 85
 Sec. 1, p. 145

84-4201
 Amended
 L. '51, c. 23
 Sec. 1, p. 32

84-4201
 Ref. to
 L. '51, c. 85
 Sec. 6, p. 147

84-4201. (2238) Duty of assessor. It shall be the duty of the assessor, on discovery of any personal property in the county, the taxes upon which he is not in his opinion a lien upon real property sufficient to secure the payment of such taxes, to immediately, and in any event not more than five days thereafter, make a report to the treasurer, setting forth the nature, kind, description and character of such property, in such a definite manner that the treasurer can identify the same, and the amount and assessed valuation of such property, where the same is located, and the name and address of the owner, claimant, or other person in possession of the same, and where such personal property is located in any city or town, which shall have provided by ordinance for the collection of its taxes for general, municipal and administrative purposes by its city or town treasurer, also and at the same time furnish to said city or town treasurer a duplicate of such notice to the county treasurer.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2683, Rev. C. 1907; re-en. Sec. 2238, R. C. M. 1921; amd. Sec. 1, Ch. 102, L. 1923; amd. Sec. 1, Ch. 24, L. 1925; amd. Sec. 1, Ch. 143, L. 1929; amd. Sec. 1, Ch. 6, L. 1939; amd. Sec. 1, Ch. 136, L. 1943. Cal. Pol. C. Sec. 3820.

Operation and Effect

The statutes in force in 1889, regulating taxation, contemplated the assessment of each distinct parcel of real estate separately, and created a direct lien on each parcel only for the tax levied thereon, and the lands of a delinquent taxpayer were not chargeable thereunder with a direct lien for a personality tax. *Ward v. Board of Commrs. of Gallatin County*, 12 M 23, 38, 29 P 658.

Personal property of a national bank is not subject to taxation under the state laws. *First National Bank v. Province*, 20 M 374, 51 P 821.

The legislature has no power to vest any other person than the treasurer with power to collect taxes. *Mutual Life Ins. Co. v. Martien*, 27 M 437, 440, 71 P 470. See, also, *Missouri River Power Co. v. Steele*, 32 M 433, 437, 80 P 1093; *City of Butte v. Bennetts*, 51 M 27, 30, 149 P 92; *Pohl v. Chicago, Milwaukee & St. Paul Ry. Co.*, 52 M 572, 577, 160 P 515.

References

Cited or applied as section 3940, political code, before amendment, in *Northwestern Mut. Life Ins. Co. v. Lewis and Clark County*, 28 M 484, 502, 72 P 982; *Averill Machinery Co. v. Freebury Bros.*, 59 M 594, 598, 198 P 130; cited as section 2683, revised codes 1907, in *Wheir v. Dye*, 105 M 347, 352, 358, 73 P 2d 209.

Taxation—553.

61 C.J. Taxation § 344 et seq.

51 Am. Jur. 830, Taxation, §§ 943 et seq.

84-4202. (2239) Duty of treasurer. The county treasurer must collect the taxes on all personal property, and in the case provided in the pre-

84-4202
 (2239 RCM'35)
 Rel. Matter
 SL '49, C. 44
 Secs. 1-5
 PP. 110-111

84-4202
 Amended
 L. '51, c. 23
 Sec. 2, p. 32

ceding section, it shall be the duty of the treasurer immediately upon receipt of such report from the assessor to notify the person or persons against whom the tax is assessed that the amount of such tax is due and payable at the county treasurer's office. The county treasurer must at the time of receiving the assessor's report, and in any event within thirty days from the receipt of such report, levy upon and take into his possession such personal property against which a tax is assessed and proceed to sell the same, in the same manner as property is sold on execution by the sheriff, and the county treasurer may for the purpose of making such levy and sale, designate and appoint the sheriff as his deputy, and such sheriff shall be entitled to receive the same fees as he is entitled to in making a seizure and sale under execution.

For the purpose of determining the taxes due, on such personal property, the treasurer must use the levy made during the previous year, if the levy for the current year has not yet been made. The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the wilful failure and neglect of such treasurer to levy upon and sell such personal property for the taxes levied thereon.

Nothing herein shall be construed as to prevent the county treasurer from collecting taxes due on personal property by seizure and sale thereof at any time after the expiration of the period hereinbefore mentioned.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2684, Rev. C. 1907; re-en. Sec. 2239, R. C. M. 1921; amd. Sec. 2, Ch. 102, L. 1923; amd. Sec. 1, Ch. 107, L. 1939. Cal. Pol. C. Sec. 3821.

NOTE.—This section superseded section 2657, revised codes of 1907. See *Averill Machinery Co. v. Freebury Bros. et al.*, 59 M 594, 598, 198 P 130.

Constitutionality

Section 2684, revised codes 1907, (this section) relating to the collection of taxes on personal property, held not open to the objection that it is unconstitutional on the ground that the title of chapter 119, laws of 1903, amending this section among others, as section 3941, codes of 1895, (since repealed), does not enumerate said section 3941 as among those amended, such objection having been removed by the adoption of the revised codes of 1907. *Averill Machinery Co. v. Freebury Bros.*, 59 M 594, 598, 198 P 130.

Notice

Section 2242, revised codes 1921, (omitted) relative to notice of time and place of sale of personal property seized for delinquent taxes, in conflict with section 2 of chapter 102, laws of 1923, amendatory of this section, held repealed by the 1923 act. *Perham v. Putnam et al.*, 82 M 349, 358, 267 P 305.

Id. Under this section, sales of personal property seized for taxes must be

conducted by the county treasurer who is required to proceed in the manner prescribed for sales of property on execution by the sheriff, the treasurer being empowered to appoint the sheriff as his deputy for the purpose of making the sale. The notice posted by the sheriff, as such deputy, of the sale of an automobile for delinquent taxes was entitled "Execution sale of personal property for taxes" instead of treasurer's sale of personal property seized for taxes, and entitled as a court action, it being signed by the sheriff and his deputy. Held, that the notice was in effect one of a sheriff's and not a treasurer's sale, did not comply with the statute, and rendered the sale void.

Operation and Effect

Under the statutes in force in 1889, the county treasurer as collector of taxes was not required to seize and sell the personal property of a delinquent taxpayer, or to sue for the tax, before proceeding to sell the real estate assessed to such delinquent. *Ward v. Board of Commrs. of Gallatin County*, 12 M 23, 38, 29 P 658.

No duty to collect city and county taxes is imposed upon the county assessor by this section. *City of Butte v. Benetts*, 51 M 27, 30, 149 P 92.

Taxation—516, 550, 568(1), 582.

61 C.J. Taxation §§ 1225, 1304 et seq., 1372 et seq.

51 Am. Jur. 830, Taxation, §§ 943 et seq. performance of acts by boards or officers
Provisions of tax statute as to time for as mandatory or directory. 151 ALR 248.

84-4203. (2240) **Mode of conducting seizure and sale.** The provisions of sections 84-4202 to 84-4208, inclusive, apply to such seizure and sale.

History: En. Sec. 3942, Pol. C. 1895; Taxation 582.
re-en. Sec. 2685, Rev. C. 1907; re-en. Sec. 61 C.J. Taxation § 1372 et seq.
2240, R. C. M. 1921. Cal. Pol. C. Sec. 3822.

84-4204. (2241) **Manner of conducting sale, etc.** The sale must be at public auction, and of a sufficient amount of the property to pay the taxes, percentages, and costs.

History: En. Sec. 135, p. 116, L. 1891; 2658, Rev. C. 1907; re-en. Sec. 2241, R. C.
re-en. Sec. 3902, Pol. C. 1895; re-en. Sec. M. 1921.

84-4205. (2243) **Treasurer's charges and mileage for sale or seizure.** For seizing or selling personal property, the treasurer may charge in each case the sum of three dollars, for the use of the county, and the same mileage as is allowed by law to the sheriff of the county, and reasonable expenses for seizing, handling, keeping, or caring for any property so seized or sold.

History: En. Sec. 137, p. 116, L. 1891; 2660, Rev. C. 1907; re-en. Sec. 2243, R.
re-en. Sec. 3904, Pol. C. 1895; re-en. Sec. C. M. 1921.

84-4206. (2244) **Title to such property vests in purchaser on payment.** On the payment of the price bid for any property sold, the delivery thereof, with a bill of sale, vests the title thereto in the purchaser.

History: En. Sec. 138, p. 116, L. 1891; **References**
re-en. Sec. 3905, Pol. C. 1895; re-en. Sec. Averill Machinery Co. v. Freebury Bros.,
2661, Rev. C. 1907; re-en. Sec. 2244, R. C. 59 M 594, 598, 198 P 130.
M. 1921.

84-4207. (2245) **Disposition of excess of proceeds over taxes, percentage and costs.** All excess over the taxes, per cent., and costs of the proceeds of any such sale must be returned to the owner of the property sold, and until claimed must be deposited in the county treasury, subject to the order of the owner, heirs, or assigns.

History: En. Sec. 139, p. 116, L. 1891; 2662, Rev. C. 1907; re-en. Sec. 2245, R. C.
re-en. Sec. 3906, Pol. C. 1895; re-en. Sec. M. 1921.

84-4208. (2246) **Unsold portion to remain at risk of owner.** The unsold portion of any property may be left at the place of sale at the risk of the owner.

History: En. Sec. 140, p. 116, L. 1891; 2663, Rev. C. 1907; re-en. Sec. 2246, R.
amd. Sec. 3907, Pol. C. 1895; re-en. Sec. C. M. 1921.

84-4209. (2247) **Rate of taxation where property is taxable.** All rates of tax levy set by the board of county commissioners on the second Monday in August of each year, shall apply permanently to this class of personal property during the ensuing year, and the treasurer shall, upon collection of any such taxes, immediately distribute the money so collected to the various and proper funds in his charge. Personal property which was in the state and subject to taxation on the first Monday in March of any year shall be taxable wherever and whenever found in any county in the state, whether the same be owned, claimed, or possessed by the person owning, claiming or possessing it on the first Monday of March or not; provided,

that in case the same property is assessed in more than one county, the county first making the assessment shall be entitled to collect the taxes; provided further, that if the rate of taxation fixed for the year in which the collection is made is an increase over the preceding year's levy, then the said board of county commissioners may direct the county treasurer to **collect the amount** of such increased levy, but shall not be obliged to do so in cases where, in the opinion of the board, the cost of collection would exceed the amount of such increase, and provided further that if the rate fixed for the year in which the collection is made shall be less than the levy for the preceding year, then the person from whom such excess tax was collected may file with the board of county commissioners a duly verified claim for a refund of such excess tax, at any time before the first day of November of the year in which such an excess was collected, and such claim shall be allowed and ordered paid by the board of county commissioners to the amount of such excess.

History: Ap. p. Sec. 158, p. 121, L. 1891; re-en. Sec. 3943, Pol. C. 1895; amd. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2686, Rev. C. 1907; re-en. Sec. 2247, R. C. M. 1921; amd. Sec. 1, Ch. 122, L. 1933. Cal. Pol. C. Sec. 3823.

Not Repealed by Implication

Held, that ch. 72, l. 1937 (53-114 et seq.), relating generally to the registration, licensing and taxation of motor vehicles, and containing a general repealing clause, does not impliedly repeal this section making provision for adjustments so that the tax finally paid shall conform to the rate for the current year, and is applicable to

the subject matter of such chapter. (Secs. 53-107, 53-114, 53-116, 53-117, 53-118 and 84-406.) *Whire v. Dye*, 105 M 347, 359, 73 P 2d 209.

References

Cited or applied as section 3943, political code, as amended, in *Flowerree Cattle Co. v. Lewis and Clark County*, 33 M 32, 39, 81 P 398; *Vennekolt v. Lutey et al.*, 96 M 72, 74, 28 P 2d 452.

Taxation↔260, 305, 537.

61 C.J. Taxation §§ 635 et seq., 694 et seq., 1258.

84-4210. (2250) Treasurer's record. The treasurer must, on or before the first day of December of each year, note on the assessment book, opposite the name of each person from whom taxes have been collected by him in pursuance of such report of the assessor, the amount of taxes received, and the date of the receipt thereof, or in case such taxes have not been collected by him, the reason why such collection was not made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2250, R. C. M. 1921.

Taxation↔557(1).

61 C.J. Taxation § 1313 et seq.

84-4211. (2251) Assessor to note report of property. The assessor must note on the assessment book opposite the names of each person owning, claiming, or possessing such personal property which may be so reported by him to the treasurer, the fact that such report was made to the treasurer, and the date when the same was so made.

History: En. Sec. 1, Ch. 119, L. 1903; re-en. Sec. 2690, Rev. C. 1907; re-en. Sec. 2251, R. C. M. 1921.

Taxation↔411.

61 C.J. Taxation § 866.

84-4212. (2252) Repealed—Chapter 134, laws of 1947.

84-4213. (2252.1) Treasurer's duty to collect road and poor taxes—seizure and sale of property—when road and poor tax to be paid. The county treasurer must demand payment of poor taxes, as authorized by section

71-106, and road taxes authorized by section 32-201 or section 84-4732, of every person liable therefor whose name does not appear on the assessment lists and on the neglect or refusal of such person to pay the same, he must collect by seizure and sale of any property owned by such person.

These taxes shall be added upon the assessment lists to other taxes of persons liable therefor, paying taxes upon real and personal property and paid to the county treasurer at the time of payment of other taxes. And all personal property assessed against a person shall be liable for the payment of such taxes.

History: En. Sec. 1, Ch. 168, L. 1935.

84-4214. (2252.2) Procedure for sale of property. The procedure for the sale of such property by the county treasurer for such taxes shall be regulated by sections 84-4201 to 84-4211, inclusive.

History: En. Sec. 2, Ch. 168, L. 1935.

CHAPTER 43

COLLECTION OF TAXES BY SUIT

Section 84-4301. Collection of taxes by action.
84-4302. Complaint in action for taxes.

84-4301. (2253) Collection of taxes by action. The state auditor may, at any time after a delinquent list has been delivered to a county treasurer, direct such treasurer not to proceed in the collection of any tax on said list amounting to three hundred dollars, further than to offer for sale but once any property upon which such tax is a lien. Upon such direction, the county treasurer, after offering the property for sale once, and there being no purchaser in good faith, must make out and deliver to the state auditor a certified copy of the entries upon the delinquent list relative to such tax; and the treasurer, or state auditor, in case the treasurer refuses or neglects for fifteen days after being directed to bring suit for collection by the state auditor, may proceed by civil action in the proper court, and in the name of the state of Montana, to collect such tax and costs.

History: En. Sec. 4020, Pol. C. 1895; P 837; Calkins v. Smith, 106 M 453, 457, re-en. Sec. 2738, Rev. C. 1907; re-en. Sec. 78 P 2d 74; Sutter v. Seudder 110 M 390, 2253, R. C. M. 1921. 394, 103 P 2d 303.

References

State v. Nicholson, 74 M 346, 352, 240 P 51 Am. Jur. 862, Taxation, §§ 984-986.

84-4302. (2254) Complaint in action for taxes. In such action a complaint in the following form is sufficient:

(Title of Court.)

The State of Montana,
vs.

(naming the defendant).

Plaintiff avers that the defendant is indebted to plaintiff in the sum of _____ dollars, state and county taxes for the fiscal year 19_____, with ten per cent. added for the non-payment of such taxes, and

..... dollars, costs of collection to date. Plaintiff demands judgment for said several sums, and prays that a writ of attachment may issue in form as prescribed by law.

(Signed by the county treasurer, or state auditor, or his attorney.)

On the filing of such complaint, the clerk must issue a summons and the writ of attachment prayed for, and such proceedings shall be had thereunder as under writs of attachment issued in civil action. If, in such action, the plaintiff recover judgment, there shall be included in such judgment an attorney's fee of ten per cent. on the amount of the tax. In such action the certified copy mentioned in the preceding section made by the treasurer and delivered to the state auditor is prima facie evidence that the person against whose property the tax was levied is indebted to the state of Montana in the amount of such tax. In case of payment of any such taxes after suit, as above mentioned, shall have been commenced, or after the recovery of judgment therefor, such payment must be made to the county treasurer of the county in which such taxes are due, whereupon the treasurer, after distributing to the several funds of the county the portions belonging to it, and paying to the state auditor or his attorney the portion received as attorney's fees and other costs, must pay the remainder to the state treasurer, at the times and in the manner prescribed by law for the payment of other state taxes.

History: En. Sec. 4021, Pol. C. 1895; Taxation 592.
re-en. Sec. 2739, Rev. C. 1907; re-en. Sec. 61 C.J. Taxation § 1397.
2254, R. C. M. 1921.

CHAPTER 44

SETTLEMENT WITH STATE AUDITOR AND TREASURER

- Section 84-4401. Settlement of county treasurer with state treasurer.
84-4402. Report of county clerk to state auditor.
84-4403. State auditor may examine books of any revenue officer.
84-4404. Directing prosecution of delinquent revenue officer for fraudulent or other misconduct.
84-4405. Special counsel may be employed—provision for expenses.

84-4401. (2255) Settlement of county treasurer with state treasurer.

The county treasurer, between the first and twentieth days of each month, must remit to the state treasurer, all moneys belonging to the state of Montana which were collected by such treasurer during the preceding month. Such remittance shall be accompanied by a detailed report upon such form as the state treasurer may prescribe, and for all such moneys by him collected and not remitted by him to the state treasurer within five days from the time herein required he shall pay interest at the rate of 10% per annum.

History: En. Sec. 3990, Pol. C. 1895; Taxation 912.
re-en. Sec. 2715, Rev. C. 1907; re-en. Sec. 61 C.J. Taxation § 2238 et seq.
2255, R. C. M. 1921; amd. Sec. 1, Ch. 47,
L. 1925. Cal. Pol. C. Sec. 3865.

84-4402. (2257) Report of county clerk to state auditor. The county clerk, between the first and twentieth days of each month, must make a report to the state auditor in such form as the state auditor may prescribe,

84-4401
Ref. to
L. '51, c. 71
Sec. 1, p. 124

84-4402
Ref. to
L. '51, c. 71
Sec. 1, p. 124

showing specifically the amount of moneys due the state from each particular source of revenue for the collections of the preceding month.

History: En. Sec. 3992, Pol. C. 1895; 2257, R. C. M. 1921; amd. Sec. 2, Ch. 47, re-en. Sec. 2717, Rev. C. 1907; re-en. Sec. L. 1925. Cal. Pol. C. Sec. 3868.

84-4403. (2265) State auditor may examine books of any revenue officer. The state auditor, as well as the state examiner, may examine the books of any officer charged with the collection and receipt of state taxes.

History: En. Sec. 4000, Pol. C. 1895; re-en. Sec. 2725, Rev. C. 1907; re-en. Sec. 2265, R. C. M. 1921. Cal. Pol. C. Sec. 3877.

84-4404. (2266) Directing prosecution of delinquent revenue officer for fraudulent or other misconduct. If, on examination, it is found that any officer has been guilty of defrauding the state of revenue, or has neglected or refused to perform any duty relating to the revenue, the state auditor must direct the attorney general or other counsel to prosecute the delinquent.

History: En. Sec. 4001, Pol. C. 1895; re-en. Sec. 2726, Rev. C. 1907; re-en. Sec. 2266, R. C. M. 1921. Cal. Pol. C. Sec. 3879. Taxation 571. 61 C.J. Taxation § 1352.

84-4405. (2267) Special counsel may be employed—provision for expenses. The state auditor or attorney general may employ other counsel, and the expenses must be audited by the board of examiners and be paid out of the state treasury.

History: En. Sec. 4002, Pol. C. 1895; re-en. Sec. 2727, Rev. C. 1907; re-en. Sec. 2267, R. C. M. 1921. Cal. Pol. C. Sec. 3880. Criminal Law 640. 27 C.J.S. District and Prosecuting Attorneys § 29.

CHAPTER 45

PROTEST PAYMENT OF TAXES—ACTION TO RECOVER

- Section 84-4501. Protest license fund.
 84-4502. Payment of taxes under protest—action to recover.
 84-4503. Assessment for taxation—increase over statement of owner.
 84-4504. Other remedies superseded.
 84-4505. Injunction does not lie to restrain enforcement of tax.

84-4501. (2409) Protest license fund. Whenever any license fee is demanded of any person for the use and benefit of the state of Montana, and the same is deemed unlawful by the person from whom the same is demanded, such person may pay the same, or so much thereof as may be deemed unlawful, under protest to the state treasurer, who shall deposit the same in a special fund to be designated "protest license fund"; and thereupon the person paying, or his legal representatives, may bring an action in a court of competent jurisdiction against the state treasurer to recover the same, without interest; provided, that any action instituted to recover any license paid under protest shall be commenced within sixty days after the date of payment thereof to the state treasurer. If no action be commenced within such sixty days, or if any action be so commenced and shall be finally decided in favor of the state treasurer the amount of the license fee shall be by the state treasurer taken from such "protest license fund" and deposited to the credit of the fund to which the same belongs, but

if such action be finally decided adversely to the state treasurer, he shall, upon receiving a copy of the final judgment in said action, refund such license fee to the person in whose favor such judgment is rendered.

History: En. Sec. 1, Ch. 188, L. 1921; re-en. Sec. 2409, R. C. M. 1921.

Where Liquor License Refused for Insufficient Tender

Semble: It would seem that this section affords the remedy for an applicant for a liquor license which is denied by the state liquor board on the ground that the tendered fee is insufficient; applicant may pay the required fee under protest and then bring an action to recover it back,

rather than to bring an action in mandamus to compel the board to issue the license for the fee tendered, the procedure followed in the instant case, wherein the time involved threatened to extend beyond the period for which the license was desired. State ex rel. Putnam v. District Court, 109 M 223, 225, 95 P 2d 441.

Licenses—34.

37 C.J. Licenses § 130 et seq.

33 Am. Jur. 396, Licenses, §§ 88, 89.

84-4502. (2269) Payment of taxes under protest—action to recover.

(1) In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect the same; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officer to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any license or tax paid under protest shall be commenced within sixty days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment, or so much thereof as may be deemed unlawful, may be so paid under written protest and suit commenced to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment, or portion thereof, so paid under protest, then such subsequent installment, or portion thereof deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment, or portion thereof, paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be retained in such protest fund until the final determination of any suit or action to recover the same.

(2) If no action is commenced within the time herein specified, or if such action be commenced and finally determined in favor of the county or municipality, or treasurer thereof, the amount of such license or tax shall be taken from such protest fund and deposited to the credit of

the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality, or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund the amount of such license or tax, with costs of suit without interest, to the person in whose favor such judgment is rendered; provided, that if such action was commenced for the purpose of recovering the first installment, or any portion thereof, of any such license or tax, and any subsequent installment thereof, has been paid under protest, as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, without interest.

History: Ap. p. Sec. 4024, Pol. C. 1895; amd. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2742, Rev. C. 1907; amd. Sec. 1, Ch. 135, L. 1909; re-en. Sec. 2269, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925.

Actions to Recover

An action to recover an unlawful license fee, exacted by a city ordinance, and paid under protest, was held to be properly brought under this section before its amendment, and the plaintiff was not required to resort to the remedy given under the preceding section. *Reilly v. Hathway*, 46 M 1, 11, 125 P 417.

An injunction lies to restrain the collection of a tax wholly void. *Barnard Realty Co. v. City of Butte*, 50 M 159, 167, 168, 145 P 946.

If the owner of the surface of an unpatented mining claim objects to its assessment for town-site purposes, he has a remedy by paying the taxes under protest, and then suing for their recovery, under section 84-4504, in action at law, and the remedy thus provided is made, by said section 84-4504, to supersede all others. *Cobban v. Meagher*, 42 M 399, 410, 113 P 290.

This section, being construed with section 84-4504, is not restricted to cases brought where an assessment was void, notwithstanding the provisions of section 84-4505. *Western Ranches v. Custer County*, 28 M 278, 282, 283, 72 P 659.

A statute, providing for payment of "taxes, licenses, and other demands for public revenue," under protest, is inapplicable to unauthorized demands by the state auditor. *Cunningham v. Northwestern Improvement Co.*, 44 M 180, 218, 119 P 554.

Under this section, one who pays taxes under protest is not required to file a claim with the board of county commissioners for the amount paid, before commencing an action to recover them. *Story v. Dixon*, 64 M 206, 210, 211, 208 P 592.

This section, under which a taxpayer may, if he deems a tax "unlawful," pay

it under protest and bring a direct action for its recovery, while exclusive except in those cases provided for in section 84-4505, where injunction lies for illegality of the tax or the property is exempt, held to permit an action for the recovery of any tax, or any part thereof, which could not lawfully be exacted, and not open to the construction that the action provided for is confined to one attacking a tax on the ground that it was illegally laid. *Johnson et al. v. Johnson et al.*, 92 M 512, 518, 15 P 2d 842.

Id. Where plaintiff in an action to recover taxes unlawfully paid asks judgment for the full amount on the tax paid under protest, the just tax on the property should be upheld, if possible, he being entitled to recover only that which was unlawfully collected, i.e., the excess.

Id. An action brought under this section to recover taxes deemed to have been unlawfully collected, is in effect a proceeding to review the decisions of the county and state boards of equalization; in such action the taxpayer is entitled to show what was before the boards; it in effect challenges the sufficiency of the evidence to warrant the orders of the boards denying him relief, and the court must determine, as a matter of law, whether or not the evidence presented to the boards was sufficient to sustain their orders.

Id. Held, under the above rules, that the complaint in an action brought under this section to recover taxes unlawfully paid under protest, setting forth the character of the lands in question, refusal of the assessor to take them into consideration, that the valuations placed on them were disproportionate to others of like character, that all the facts relied upon were known to both county and state boards of equalization, that no evidence contradictory of that of plaintiff was introduced before either board, and that both disregarded the evidence and acted arbitrarily in refusing him relief, was not vulnerable to a general demurrer as alleging mere conclusions.

Exclusive Remedies

Held, that the legal remedy by action to recover back a tax paid under protest on a levy deemed unlawful, provided by this section, when read in connection with section 84-4504, which provides that such action shall supersede all other remedies which might be invoked to prevent the collection of taxes alleged to be irregularly levied or demanded, and the equitable one, by injunction in the instances enumerated in section 84-4505, are exclusive; that where a tax is wholly illegal or the legal and illegal portions thereof appear to be inseparable, either remedy is available; and that to the extent the above holding with reference to the legal remedy conflicts with section 84-4176, the latter section must be considered repealed. *First Nat. Bank v. Sanders County*, 85 M 450, 459 et seq., 279 P 247.

See also: *First Nat. Bank v. Beaverhead County*, 88 M 577, 579, 294 P 956; *Williams v. Harvey et al.*, 91 M 168, 171, 6 P 2d 418.

Interest Not Recoverable

Section 2271, R. C. M. 1921 (omitted), provides that where a taxpayer has judgment in his action to recover taxes paid under protest he shall be entitled to interest thereon. This section provides that the successful plaintiff shall have judgment without interest. The general repealing clause declares that all acts and parts of acts in conflict with the amendatory act are repealed. Held, that the provision for interest in section 2271 (omitted) and the one in this section for no interest are so repugnant to each other that they cannot be reconciled, and therefore the latter act is controlling in this respect. *Fulton Oil Co. v. Toole County*, 86 M 367, 373, 283 P 769.

Id. Held, that the contention of successful plaintiff, in an action to recover taxes paid under protest, that under section 2271, R. C. M. 1921 (omitted), he is still entitled to interest on the judgment in his favor and that the provision of this section, in providing that his recovery shall be "with costs of suit without interest" means that the interest thus mentioned applies only to the costs, may not be sustained.

Interest Provision Not Applicable to Action Under Section 84-4176

Held, under this section, providing inter alia that when taxes paid under protest may be recovered, recovery shall be had without interest, has no application to an action based on section 84-4176, authorizing refund of a tax "paid more than once," but that in such an action plaintiff is entitled to interest on the unlawful tax

from the date of payment, even though plaintiff, to avoid the imputation that the payment made was voluntary, made it under protest. *Williams v. Harvey et al.*, 91 M 168, 171 et seq., 6 P 2d 418.

Time Limitations

Whenever a statute grants a right which did not exist at common law, and prescribes the time within which the right must be exercised, the limitation thus imposed does not affect the remedy merely, but is of the essence of the right itself, and one who seeks to enforce such right must show affirmatively that he has brought his action within the time fixed by the statute; and if he fails in this regard, he fails to disclose any right to relief under the statute. *Dolenty v. Broadwater County*, 45 M 261, 267, 122 P 919.

Id. The provisions of this section, that an action to recover taxes paid under protest must be commenced within sixty days after the thirtieth day of November of the year in which taxes are paid, applies generally to any action instituted to recover any tax paid under protest. Apparently the legislature assumed that taxes might be paid under protest and contested for reasons other than those referred to in section 84-4502; and it was for the purpose of covering such cases that the amendment to this section was made, and a uniform rule established covering all cases of action to recover taxes paid under protest.

If money paid under protest upon a special improvement assessment is a "tax, license, or other demand for public revenue," within the meaning of this section, suit to recover same is barred sixty days after November 30th of the year in which the tax was paid. If, however, money so paid is not such a "tax, license, or other demand for revenue," it forms the basis of a mere demand against the city, not suable until after presentation to and disallowance by the city council. *Leggat v. City of Butte*, 54 M 137, 140, 168 P 38.

Held, that the complaint in an action to recover taxes paid under protest need not allege that suit was brought within the sixty-day period prescribed in this section, it being sufficient if it be made to appear affirmatively that it was so brought, by recitals showing when the tax was paid and when the complaint was filed. *Belknap Realty Co. v. Simineo et al.*, 67 M 359, 365, 215 P 659.

When Court Will Not Substitute Its Judgment for That of Tax Officials

In an action to recover taxes paid under protest, under complaint alleging overvaluation, and that acts of defendants assessor and county and state boards of

equalization were fraudulent in law and showed mistake so gross as to be inconsistent with reasonable judgment, and were tyrannical and capricious, held, that the supreme court will not substitute its judgment for that of taxing officials, and will not notice an alleged overvaluation honestly made, but will grant relief on overvaluation only where it is so gross as to be inconsistent with the exercise of honest judgment. *Investors Security Co. v. Moore and Baker v. Moore*, 113 M 400, 405, 127 P 2d 225.

Where Federal Government Recovered Taxes Paid without Protest by Indians, after Cancellation of Title Granted without Their Application and Consent

Where patents were issued to federal government in trust for Indians to whom lands had been allotted, fee title was granted to Indians without any application by them, county taxed lands, and fee patents were thereafter canceled by federal government because issued without consent of Indians, the fact that Indians in paying tax had not done so under protest did not bar federal government's recovery of taxes since the Indians were wards and had neither knowledge of their rights nor adequate means of safeguarding them; however government could not recover interest on the taxes so paid. *Glacier County v. United States*, 99 F 2d 733, 735.

References

Cited or applied as section 4024, political code, before amendment, in *Montana Ore Purchasing Co. v. Maher*, 32 M 480,

490, 81 P 13; *Hensley v. City of Butte*, 33 M 206, 210, 83 P 481; as section 2742, revised codes, as amended, in *Hill v. County of Lewis and Clark*, 54 M 479, 485, 171 P 929; *Read v. Lewis and Clark County*, 55 M 412, 414, 178 P 177; *State v. Silver Bow Refining Co.*, 83 M 380, 387, 272 P 684; *Fulton Oil Co. v. Toole County*, 86 M 367, 375, 283 P 769; *Chicago etc. R. R. Co. v. Fallon County*, 95 M 568, 587, 28 P 2d 462; *Christofferson v. Chouteau County*, 105 M 577, 581, 74 P 2d 427; *International Business Machine Corporation v. Lewis and Clark County*, 111 M 384, 387, 112 P 2d 477; *First National Bank v. Bergan*, — M —, 169 P 2d 233, 235.

Taxation—543(1-9).

61 C.J. Taxation § 1271 et seq.

51 Am. Jur. 1005, Taxation, §§ 1167 et seq.

Right to interest on tax free bonds. 57 ALR 357.

Mortgagee's right to recover taxes paid to protect his security as affected by invalidity of mortgage. 84 ALR 1371.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted. 98 ALR 284.

Permissive or mandatory character of legislation providing for refund of taxes illegally assessed or collected. 103 ALR 817.

Right to amend claim for refund of taxes after time for filing has expired. 113 ALR 1291.

Assignability of claim for tax refund, and rights of assignee in respect thereof. 134 ALR 1202.

84-4503. (2270) Assessment for taxation—increase over statement of owner. Whenever any person has delivered to the assessor a sworn statement of his property subject to taxation as now provided by law, and giving the estimated value of such property, and the assessor shall increase such estimated value, or add other property to such assessment list, he shall, at least ten days prior to the meeting of the county board of equalization, give to such person written notice of such change which notice shall be substantially in the following form:

(Date)

Mr.

A change has been made in your assessment list as follows:

(Set out and describe specifically changes made in list.)

Assessor of County, Montana.

Such person may then appear before the county board of equalization and contest the same; and if the assessment of any such person has been added to or changed, either by the assessor or by the county board of equalization, and such person has not been notified thereof and given an opportunity to contest the same before the county board of equalization, the tax

on such increased value or added property shall, upon such facts being established, be adjudged by the court to be void, and such facts and all questions relating thereto, when said tax has been paid under protest, may be heard and determined in the action provided for in section 84-4502. When any person has appeared before the county board of equalization and has contested the increase in the estimated value of his property, or the addition of other property to his assessment list, and has appealed to the state board of equalization from any action or decision with reference thereto by the county board of equalization and such person is aggrieved at the final action of the state board of equalization in making or allowing such increase or addition, he may pay the tax on such increase or addition or the installments thereof if payable in installments, under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such taxes on such increased value or added property, on the same grounds and for the same reasons that he has contested the same before the county and state boards of equalization, and for no other reasons and on no other grounds; provided, that all of the provisions of section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section.

History: En. Sec. 1, Ch. 108, L. 1905; re-en. Sec. 2743, Rev. C. 1907; amd. Sec. 2, Ch. 135, L. 1909; re-en. Sec. 2270, R. C. M. 1921; amd. Sec. 1, Ch. 142, L. 1925.

NOTE.—In *International B. M. Corp. v. Lewis and Clark County*, 111 M 384, 393, 112 P 2d 477, the portion of the above section which purported to authorize the district court to act as an assessing tribunal was held unconstitutional and is therefore omitted from this code.

Operation and Effect

This section applies only to actions brought to recover taxes paid under protest for any of the reasons therein mentioned. *Dolenty v. Broadwater County*, 45 M 261, 265, 122 P 919.

Where the taxing authorities levy a tax not authorized by law or upon property not subject to be taxed, their action is without jurisdiction and wholly void, and the remedy by injunction is available. The right of the owner of property to relief by injunction is not in anywise affected by his failure, either upon notice by the assessor or by the board itself, to make timely objection. The assessment being wholly illegal, because without authority, its validity may be questioned by any available method. *Barnard Realty Co. v. City of Butte*, 50 M 159, 167, 145 P 946.

The provision found in this section, to the effect that if the assessment has been added to or changed either by the assessor or by the county board of equalization,

etc., is, by its terms, available only to the "person who had delivered to the assessor a sworn statement of his property subject to taxation" with "the estimated value" thereof. This means all of his taxable property, according to his best knowledge and belief, and the fact that, notwithstanding such list, the assessor or board may increase the value or add other property implies that an honest controversy must exist between the public and the taxpayer as to what property should have been taxed, or what value should have been placed upon it. *Hill v. County of Lewis and Clark*, 54 M 479, 485, 486, 171 P 929.

Where the assessor had correctly assessed coal mining claims at \$20 an acre agreeably to the constitutional command, as indicated on the blank mailed to their owner, a coal mining company, which returned it claiming that it could only be assessed on its right of entry, failure of the assessor to give the company an opportunity to appear before the county board of equalization and be heard on its claim of overtaxation (this section) could not have resulted in any change in the assessment and, therefore, such failure could not be urged against the legality of the assessment, the law not requiring idle acts. *Superior Coal Co. v. Musselshell Co. et al.*, 98 M 501, 527, 41 P 2d 14.

Unconstitutional Only as to Authorizing District Court to Act as a Tax Assessing Tribunal

That part of this section authorizing

action to recover taxes paid under protest on ground of over-valuation of property with trial by jury after the state board of equalization has refused to grant relief is in conflict with sec. 1, art. IV, of the state constitution relating to the powers of the three departments of state government, in that it attempts to impose upon the judiciary, functions in fact finding matters that properly belong to another department of state government. *International Business Machine Corporation v. Lewis and Clark County*, 111 M 384, 390, 112 P 2d 477.

References

Cited or applied as section 2743, revised codes, before amendment, in *Merges v. Altenbrand*, 45 M 355, 364, 123 P 21; as section 2743, revised codes, as amended, in *Leggat v. City of Butte*, 54 M 137, 139, 168 P 38; *Anaconda Copper Min. Co. v. Ravalli County et al.*, 56 M 530, 186 P 332; *Belknap Realty Co. v. Simineo et al.*, 67 M 359, 365, 215 P 659; *First National Bank v. Sanders County*, 85 M 450, 458, 279 P 247.

Taxation 352, 542, 543 (1-9).
61 C.J. Taxation §§ 770, 1271 et seq.

84-4504. (2272) Other remedies superseded. The remedy hereby provided shall supersede the remedy of injunction and all other remedies which might be invoked to prevent the collection of taxes or licenses alleged to be irregularly levied or demanded, except in unusual cases where the remedy hereby provided is deemed by the court to be inadequate.

History: En. Sec. 4026, Pol. C. 1895; re-en. Sec. 2745, Rev. C. 1907; re-en. Sec. 2272, R. C. M. 1921.

Operation and Effect

The publication of the notice of a tax sale three weeks, when the statute required four weeks, does not render the taxes illegal, and authorize the enjoining of the collection of such tax. Nor does the fact that the treasurer intends to violate certain sections of the law, by exposing for sale, for the delinquent taxes of one year a part of the lands purchased by the county at the tax sales of the preceding year, and yet unredeemed, entitle the owner of the equity of redemption to an injunction, since the above section provides that the remedy before the board of equalization shall supersede the remedy of injunction, etc., except in those unusual cases where the remedy thereby provided is deemed by the court inadequate. *Cobban v. Hinds*, 23 M 338, 350, 59 P 1.

The phrase "irregularly levied or demanded" was used by the legislature advisedly, and as prescribing the limits wherein the statutory remedy is exclusive, as distinguished from those cases of illegal taxes the collection of which may be restrained by injunction. *Montana Ore Purchasing Co. v. Maher*, 32 M 480, 490, 81 P 13.

References

Cited or applied as section 4026, political code, in *Western Ranches v. Custer County*, 28 M 278, 282, 72 P 659; *Hensley v. City of Butte*, 33 M 206, 210, 83 P 481; as section 2745, revised codes, in *Cobban v. Meagher*, 42 M 399, 410, 113 P 290; *Barnard Realty Co. v. City of Butte*, 50 M 159, 167, 145 P 946; *State v. Silver Bow Refining Co.*, 83 M 380, 387, 272 P 684; *First National Bank v. Sanders County*, 85 M 450, 458, 279 P 247; *Williams v. Harvey et al.*, 91 M 168, 171, 6 P 2d 418; *Christofferson v. Chouteau County*, 105 M 577, 581, 74 P 2d 427.

84-4505. (2268) Injunction does not lie to restrain enforcement of tax. No injunction must be granted by any court or judge to restrain the collection of any tax or any part thereof, nor to restrain the sale of any property for the non-payment of taxes, except:

1. Where the tax, or the part thereof sought to be enjoined, is illegal, or is not authorized by law. If the payment of a part of a tax is sought to be enjoined, the other part must be paid before an action can be commenced.
2. Where the property is exempt from taxation.

History: En. Sec. 204, p. 128, L. 1891; re-en. Sec. 4023, Pol. C. 1895; re-en. Sec. 2741, Rev. C. 1907; re-en. Sec. 2268, R. C. M. 1921.

Exclusive Remedy

Held, that the legal remedy by action to recover back a tax paid under protest on a levy deemed unlawful, provided by

section 84-4502, when read in connection with section 84-4504, which provides that such action shall supersede all other remedies which might be invoked to prevent the collection of taxes alleged to be irregularly levied or demanded, and the equitable one, by injunction in the instances enumerated in this section, are exclusive; that where a tax is wholly illegal or the legal and illegal portions thereof appear to be inseparable, either remedy is available; and that to the extent the above holding with reference to the legal remedy conflicts with section 84-4176, the latter section must be considered repealed. *First Nat. Bank v. Sanders County*, 85 M 450, 463, 279 P 247.

See also: *First Nat. Bank v. Beaverhead County*, 88 M 577, 579, 294 P 956; *Williams v. Harvey et al.*, 91 M 168, 171, 6 P 2d 418.

Section 84-4502 under which a taxpayer may, if he deems a tax "unlawful," pay it under protest and bring a direct action for its recovery, while exclusive except in those cases provided for in this section where injunction lies for illegality of the tax or the property is exempt, held to permit an action for the recovery of any tax, or any part thereof, which could not lawfully be exacted, and not open to the construction that the action provided for is confined to one attacking a tax on the ground that it was illegally laid. *Johnson et al. v. Johnson et al.*, 92 M 512, 519, 15 P 2d 842.

When Injunction Does Lie

Where a portion of an assessment made in a lump sum to plaintiff railway company, was legal and a portion illegal, and the company was unable to ascertain and pay that which was legal, the remedy by injunction to restrain the threatened issuance of a tax deed was available to it. *Northern Pac. Ry. Co. v. Musselshell County*, 54 M 96, 108, 109, 169 P 53.

This section, by necessary implication, provides a remedy by injunction where the tax demanded is illegal or not authorized by law. *Cunningham v. Northwestern Improvement Co.*, 44 M 180, 218, 119 P 554.

An action to enjoin collection of illegal tax could be maintained even though taxpayer might have paid tax under protest and sued for its recovery. *First National Bank v. Bergan*, ___ M ___, 169 P 2d 233, 235.

When Injunction Does Not Lie

Injunction will lie if the action of the assessor or board of equalization was such that the tax complained of is manifestly void under any circumstances; but if the error complained of is only an

irregularity on the part of the assessor, board of equalization, or treasurer, or where the tax is not necessarily void under all circumstances, the remedy of payment under protest and an action to recover back is exclusive, except in the unusual cases mentioned in section 84-4504. *Montana Ore Purchasing Co. v. Maher*, 32 M 480, 490, 81 P 13; *Hensley v. City of Butte*, 33 M 206, 211, 83 P 482; *Cobban v. Meagher*, 42 M 399, 411, 113 P 290; *Barnard Realty Co. v. City of Butte*, 50 M 159, 167, 145 P 946.

The court may not restrain the collection of a tax levied on the surface of an unpatented mining claim having a separate and independent value because of its use for other than mining purposes, on the ground that the assessor failed to set forth in the assessment the fact that the surface ground was assessed for other than mining purposes, but the remedy is by an action at law under section 84-4502 to recover the taxes paid under protest. *Cobban v. Meagher*, 42 M 399, 410, 411, 113 P 290.

This and following sections prohibit courts and judges from enjoining the sale of the property for non-payment of any tax, except in those instances where the tax is illegal, or not authorized by law, or where the property is exempt from taxation, and provide the means and remedies whereby the rights of persons who deem the taxes irregularly or improperly demanded of the owners, or sought to be enforced, against the property, may be guarded and protected. *Cobban v. Hinds*, 23 M 338, 349, 350, 59 P 1. See *Montana Ore Purchasing Co. v. Maher*, 32 M 480, 490, 491, 81 P 13; *Hensley v. City of Butte*, 33 M 206, 211, 83 P 482; *Cobban v. Meagher*, 42 M 399, 411, 113 P 290, and *Barnard Realty Co. v. City of Butte*, 50 M 159, 167, 168, 145 P 946.

Payment Under Protest with Suit to Recover Not Sole Remedy If Tax Is Illegal

In action to enjoin collection of a tax levy claimed to be illegal, defendants' contention that plaintiffs' remedy was to pay the tax under protest and sue for its recovery held incorrect, since such is not the exclusive remedy where the levy is illegal. *Rogge v. Petroleum County et al.*, 107 M 36, 47, 80 P 2d 380.

References

Cited or applied as section 4023, political code, in *Barrett v. Shannon*, 19 M 397, 400, 48 P 746; *Deloughrey v. Hinds*, 23 M 260, 272, 58 P 709; *Western Ranches v. Custer County*, 28 M 278, 282, 72 P 659; as section 2741, revised codes, in *Reilly v. Hatheway*, 46 M 1, 11, 125 P 417; *State v. Silver Bow Refining Co.*, 83 M

380, 387, 272 P 684; Christofferson v. Taxation 608(1, 2), 652.
 Chouteau County, 105 M 577, 581, 74 P 2d 61 C.J. Taxation §§ 1418 et seq., 1583
 427. et seq.

CHAPTER 46

BANKS—TAXATION

Section 84-4601. National banks out of state.
 84-4602. Assessment of stock in banking corporations.
 84-4603. Payment of taxes—entry of assessment.
 84-4604. Statements to be furnished by officers.
 84-4605. Taxation of banks and shares of stock in.

84-4601. (2063) National banks out of state. The shares of the capital stock of banks organized under the laws of the United States, not located in this state, owned by residents of this state, are not subject to taxation.

History: En. Sec. 9, p. 76, L. 1891; 377, 51 P 821; Daly Bank, etc. Co. v. Board of Commrs., 33 M 101, 103, 81 P 950; Montana Nat. Bank v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876.
 re-en. Sec. 3694, Pol. C. 1895; re-en. Sec. 2506, Rev. C. 1907; re-en. Sec. 2063, R. C. M. 1921.

References

Cited as section 3694 of political code, Taxation 11.
 in First Nat. Bank v. Province, 20 M 374, 61 C.J. Taxation § 275 et seq.
 51 Am. Jur. 309, Taxation, §§ 254 et seq.

84-4602. (2064) Assessment of stock in banking corporations. All shares of stock in national banks existing by authority of the United States and located and doing business within this state, shall be assessed to the owners thereof in the cities, towns, or places where such banks are located, and not elsewhere, in the assessment of all state, county, school districts, and municipal taxes, imposed and levied in such place whether or not the owner of such stock is a resident of such city, town or place.

History: En. Sec. 1, Ch. 81, L. 1921; son v. Meagher County, 116 M 565, 568, 155 P 2d 750.
 re-en. Sec. 2064, R. C. M. 1921.

NOTE.—Prior acts were sections 2503 to 2505, revised codes, 1907, and chapter 31, laws of 1915.

Cross-References

Bank ceasing business, how taxed, sec. 5-1022.

Building and loan associations, taxation, sec. 7-122.

Credit unions, taxation of, sec. 14-126.

Ad Valorem Tax Not Repealed by Income Tax on Dividends

Where recovery of property or ad valorem tax was attempted on the theory that national bank shares had been taxed under the income tax law, 84-4901 et seq., and that the legislature had impliedly repealed the ad valorem method of taxing them and substituted the tax on dividends, held, that no such substitution was made or intended, and ad valorem tax not repealed by income tax on dividends. John-

Operation and Effect

Under section 5219, United States revised statutes, shares of stock of national banks may be taxed by the state provided no unfriendly discrimination is made against such shares in favor of moneyed capital in the hands of individual citizens of the state, moneyed capital meaning capital employed in competition with the business of national banks. First Nat. Bank v. County of Dawson, 66 M 321, 330, 213 P 1097.

References

Union Bank etc. Co. v. Moore, 62 M 132, 135, 204 P 361; Montana Nat. Bank v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876.

Taxation 127, 281.
 61 C.J. Taxation §§ 264, 658.
 51 Am. Jur. 315, Taxation, § 262.

84-4603. (2065) Payment of taxes—entry of assessment. Every national bank shall pay to the person authorized to collect taxes in the state, county,

city, town, or place in which such bank is located, at the time of each year when other taxes become due, the amount of the tax upon the shares in such bank. Said banks shall be liable for the payment of the said tax, and if the same is not paid on or before the thirtieth day of November of each year at six o'clock p. m., the said tax shall become delinquent, and shall be collected in the same manner and be subject to the same laws as all other delinquent taxes.

For convenience, the assessment of shares of stock in national banks, and herein referred to, shall be entered on the personal property assessment list under the name of the bank, and in such statement the names of the holders of bank stock shall be set forth, and the shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the name and against the holder of bank stock individually.

History: En. Sec. 2, Ch. 81, L. 1921; etc. Co. v. Moore, 62 M 132, 135, 204 P 361; Montana Nat. Bank v. Yellowstone County, 78 M 62, 73 et seq., 252 P 876.

References

First Nat. Bank v. County of Dawson, 66 M 321, 330, 213 P 1097; Union Bank Taxation 386(1), 522.
61 C.J. Taxation § 1230.

84-4604. (2066) Statements to be furnished by officers. The cashier of every national bank shall make and deliver to the assessor of the county in which said bank is located, within five days after demand therefor, a statement, verified by his oath, showing the name of each shareholder, with his residence and the number of shares belonging to him at the close of business the day next preceding the first Monday in March, in each year, as the same then appeared on the books of said bank, and showing the face value of the capital stock, and the amount of surplus and undivided profits of said bank, and an estimate of the value for which such stock shall be assessed. If said cashier fails to make such statement as required, the assessor shall forthwith obtain said information from the officers of the bank and for this purpose he shall have access to the books of the bank, and the assessor shall therefor make an assessment of such stock, which shall be as fair and equitable as he may be able to make from the best information available, or he may adopt the figures disclosed by any prior report of the officers or directors of the bank, made to any state or federal officer to whom such bank is by law required to make reports.

History: En. Sec. 3, Ch. 81, L. 1921; County, 78 M 62, 73 et seq., 252 P 876; Merchants Nat. Bk. v. Dawson County, 93 M 310, 316 et seq., 19 P 2d 892; Miners National Bank of Butte v. County of Silver Bow, 116 M 31, 34, 148 P 2d 538.

References

First Nat. Bank v. County of Dawson, 66 M 321, 330, 213 P 1097; Union Bank etc. Co. v. Moore, 62 M 132, 135, 204 P 361; Montana Nat. Bank v. Yellowstone Taxation 386(1).
61 C.J. Taxation § 845 et seq.

84-4605. (2067) Taxation of banks and shares of stock in. (1) Every state bank or banking corporation located and doing business in this state, and every private banker doing business in this state, shall be taxable upon the value of all real estate and personal property owned by such bank, banking corporation or private banker, and also upon the moneyed capital employed in such business, such moneyed capital to be ascertained as provided

by section 84-301; and the cashier or secretary of every such bank or banking corporation, and every such private banker, shall furnish to the assessor of the county in which its or his bank is located, within five days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of such bank as disclosed by its books, at twelve o'clock noon on the first Monday of March in each year; if such cashier, secretary or private banker shall fail to make the statement hereby required, the assessor shall forthwith obtain such information from any other available source, and for this purpose he shall have access to the books of such bank, banking corporation or private banker. The assessor shall thereupon make an assessment of the real estate and personal property owned by such bank, banking corporation or private banker, and of the moneyed capital employed in the business of such bank, banking corporation or private banker, which assessment shall be as fair and equitable as he may be able to make from the best information available, or said assessor may, for the purpose of said assessment, adopt the figures disclosed by any prior report made by such bank, banking corporation or private banker to any state or federal officer pursuant to any state or federal law. Any person required by this section to make the statement hereinabove provided, who shall fail to furnish the same, shall be guilty of a misdemeanor and shall be punished accordingly.

(2) All shares of stock in any such bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is assessable and taxable to such bank or banking corporation in this state, and shall be taxable to the owners of such shares in the county, school district, city, town, or place where such bank or banking corporation is located and not elsewhere, whether or not the owners of such shares are residents of such county, school district, city, town or place.

(3) The cashier or secretary of any such bank or banking corporation shall furnish to the assessor, upon his demand therefor, the name of each stockholder with his residence and the number of shares belonging to him at twelve o'clock noon of the first Monday in March of each year; and if such cashier or secretary, for more than five days after such demand, shall fail to furnish such information, he shall be guilty of a misdemeanor and the assessor may obtain such information from any other available source, and for such purposes shall have access to the books of such bank or banking corporation. For convenience the assessment of such shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each, and such assessment, when so entered, shall have all the force and effect as if made in the names of the owners of such shares individually. The bank or banking corporation in which such shares are owned shall be liable for the payment of taxes assessed against such shares, and such taxes shall be payable by and may be collected from such bank or banking corporation in the same manner and under the same penalties as other taxes; provided that such bank or banking corporation may recover from such owners of shares any taxes so paid

on such shares, and shall have a lien therefor upon such shares and upon any dividends accrued or to accrue thereon.

History: En. Sec. 4, Ch. 81, L. 1921; re-en. Sec. 2067, R. C. M. 1921; amd. Sec. 1, Ch. 64, L. 1927.

Operation and Effect

Corporate shares in state banks held by individuals are taxable under this section to the extent they have a value beyond that of the taxable property of the bank. *State v. Mady*, 83 M 418, 424, 272 P 691.

Chapter 64, laws of 1929 (84-303 to 84-308) and this section, so far as they relate to taxation of moneyed capital and shares of stock of state banks, in requiring reports for purposes of assessment by a banking corporation though none is required from owners of competing capital, are not special laws in contravention of section 26, article V, of the constitution, the taxing officers under other provisions

of law having authority to call for such reports. *Bank of Miles City v. Custer County*, 93 M 291, 309 et seq., 19 P 2d 885.

References

Union Bank etc. Co. v. Moore, 62 M 132, 135, 204 P 361; *First Nat. Bank v. County of Dawson*, 66 M 321, 330, 213 P 1097; *Montana Nat. Bank v. Yellowstone County*, 78 M 62, 73 et seq., 252 P 876; *Merchants Nat. Bk. v. Dawson County*, 93 M 310, 329, 19 P 2d 892.

Taxation—126, 386(1, 2), 522.

61 C.J. *Taxation* §§ 262 et seq., 845 et seq., 1230.

51 Am. Jur. 819, *Taxation*, §§ 929 et seq.

Deduction on account of exempt securities in taxation of corporations or their shareholders. 57 ALR 899.

CHAPTER 47

CITIES AND TOWNS—TAXATION AND LICENSE

- Section 84-4701. Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes.
- 84-4702. Special tax by cities and towns to provide post war funds authorized.
- 84-4703. Transfer of unexpended funds in street fund.
- 84-4704. Expenditures from special fund, when—purpose—approval of electors, when.
- 84-4705. Budget required.
- 84-4706. Cities and towns may raise money by taxation in excess of levy now permitted, how.
- 84-4707. Notice of election.
- 84-4708. Submission of question to state object of levy—use of funds—balance.
- 84-4709. Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election.
- 84-4710. Registration of electors.
- 84-4711. Qualifications for voting on creation or increasing municipal or school indebtedness.
- 84-4712. Special taxes and assessments.
- 84-4713. Taxes in cities and towns which have exceeded the constitutional limit of indebtedness.
- 84-4714. City authorized to levy special taxes.
- 84-4715. Annual tax—equalization and collection.
- 84-4716. Levy, etc., to be made under this chapter.
- 84-4717. Basis of taxation.
- 84-4718. Duty of county assessor.
- 84-4719. Copies of assessment books to be furnished cities and towns.
- 84-4720. Charge of assessor for making copies.
- 84-4721. Equalization of taxes.
- 84-4722. Affidavit of aggrieved party.
- 84-4723. Preparation of assessment book.
- 84-4724. Book to be furnished by city.
- 84-4725. Delivery of book to city treasurer.
- 84-4726. Collection of taxes—delinquent taxes.
- 84-4727. Delinquent tax—sales of property taxed or specially assessed by cities or towns.
- 84-4728. Collection of delinquent taxes by cities authorized.
- 84-4729. Fixing amount of tax levy—certification to county or city clerk.

Tit. 84, c. 47
Rel. matter
L. '51, c. 88
Secs. 1-4
pp. 150-152

- 84-4730. Fiscal year.
- 84-4731. Annual appropriation—manner and time of making.
- 84-4732. Road poll-tax.
- 84-4733. List of persons liable for poll-tax.
- 84-4734. Powers of city clerk and treasurer.
- 84-4735. Poll-tax—how expended.
- 84-4736. Work on the streets, etc.
- 84-4737. License tax may be levied.

84-4701. (5194) Limitation on amount of tax for municipal purposes—distribution of funds—levy for park, swimming pools, playgrounds, youth centers and other purposes. The amount of taxes to be assessed and levied for general municipal or administrative purposes in cities of the first class with a population of thirty-five thousand (35,000) or over must not exceed one and four-tenths (1-4/10%) per centum of the assessed value of the taxable property in all cities of the first class, and all other cities and towns must not exceed one and three-fourths (1-3/4%) per centum on the per centum of the assessed value of the taxable property of the city or town; and the council in each city or town may distribute the money collected into such funds as are prescribed by ordinance; provided, that for the purpose of procuring, equipping and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, the council in any city or town may assess and levy, in addition to the said levy for general municipal or administrative purposes, not exceeding six (6) mills on the dollar on the per centum of the assessed value of the taxable property of the city or town.

History: Ap. p. Sec. 415, 5th Div. Comp. Stat. 1887; amd. Sec. 16, p. 185, L. 1889; amd. Sec. 4814, Pol. C. 1895; re-en. Sec. 3342, Rev. C. 1907; amd. Sec. 1, Ch. 103, L. 1911; amd. Sec. 1, Ch. 27, L. 1917; re-en. Sec. 5194, R. C. M. 1921; amd. Sec. 1, Ch. 156, L. 1923; amd. Sec. 1, Ch. 175, L. 1925; amd. Sec. 1, Ch. 48, L. 1937; amd. Sec. 4, Ch. 71, L. 1945. Cal. Pol. C. Sec. 4371.

Cross References

- Airports, sec. 1-804.
- Bond issues, levy for, sec. 11-2322.
- Cemetery districts, levy for, sec. 9-209.
- City budget, levy for, sec. 11-1406.
- Council may levy and collect, sec. 11-902.
- Emergency expenditures, levy for, sec. 11-1409.
- Fire districts, levy for support of, sec. 11-2008.
- Firemen's disability fund, levy, sec. 11-1912.
- Free public libraries, levy for, sec. 44-301.
- Garbage removal from city streets, levy for, sec. 11-909.
- Police reserves, levy for, sec. 11-1823.
- Sanitary districts, levy, sec. 11-3609.
- Smoke nuisance abatement bonds, levy, sec. 11-2509.
- Special tax levies, authority, sec. 84-4714.
- Volunteer fire departments, levy for, sec. 11-1909.

Operation and Effect

Construing prior to amendments of 1923 and 1925, this court held, under this section, that a city had the power to levy special taxes for the purpose of paying interest on bonded indebtedness and creating a sinking fund, and that the contention that the taxing power of a city of a class other than the first class was limited to a ten mill levy for all purposes by this section, has no merit. *First Nat. Bank of Glendive v. Sorenson*, 65 M 1, 5, 210 P 900.

Construing prior to amendments of 1923 and 1925, this section provides that towns may levy taxes for general municipal purposes, not to exceed ten mills on the assessed value of their taxable property. Under sections 84-301 and 84-302, the "taxable value" of property of different classes is fixed at a certain percentage of the assessable value, that of real property being fixed at thirty per cent of its assessed value. Defendant town assumed to levy a tax of twenty mills, contending that on the value as fixed by sections 84-301 and 84-302, the tax so imposed did not exceed ten mills on the assessed value as fixed by this section. Held, in an action to recover taxes paid on real property under protest, that this section and sections 84-301 and 84-302 being in irreconcilable conflict, and such sections (84-301 and 84-302) being the later enactments, are controlling to the

extent of the repugnancy, that the taxable value as fixed by those sections, and not the assessed value fixed by this section, is the standard prescribed for computing taxes, and that therefore the tax in excess of ten mills on the dollar of taxable value was invalid. *Wibaux Improvement Co. v. Breitenfeldt*, 67 M 206, 207 et seq., 215 P 222.

Contention by defendant town that since it was levying the maximum amount of taxes allowable under this section, it could not levy a tax each year to pay interest on water bonds and create a sinking fund, held not meritorious, the levy under this section being for general, municipal or administrative purposes, while

under sec. 11-2303, a special tax may be levied in addition to that provided for herein to retire bonded indebtedness and interest on such bonds. *State ex rel. Mueller v. Todd*, 114 M 35, 42, 132 P 2d 154.

References

Northern Pacific Railway Co. v. Dunham, 108 M 338, 344, 90 P 2d 506.

Municipal Corporations—956(2).

44 C.J. *Municipal Corporations* § 4292 et seq.

38 Am. Jur. 72, *Municipal Corporations*, §§ 385, 386.

84-4702. Special tax by cities and towns to provide postwar funds authorized. For the purpose of accumulating and providing postwar funds for the construction, improvement, repair and maintenance of public streets, avenues, alleys and ways, the council or commission of each city and town in this state may, in their discretion, levy and cause to be collected, during each or either of the fiscal years beginning July 1, 1945 and ending June 30, 1946, and beginning July 1, 1946 and ending June 30, 1947, a special tax upon the taxable property in the city or town of not more than five (5) mills on the dollar, which shall be payable to the city or town treasurer with other taxes, which levies shall be in addition to all other levies now authorized by law to be made for street purposes. All moneys derived from such levies shall be placed in a special street fund and shall be kept separate from all other street fund moneys.

History: En. Sec. 1, Ch. 172, L. 1945; amd. Sec. 1, Ch. 107, L. 1947.

84-4703. Transfer of unexpended funds in street fund. The council or commission of each city or town may, in their discretion, at the close of each of the fiscal years ending June 30, 1945, June 30, 1946, and June 30, 1947, transfer to such special street fund any unexpended and unappropriated funds remaining in the city or town street fund, over and above the amount set apart and appropriated as a reserve for the then current fiscal year.

History: En. Sec. 2, Ch. 172, L. 1945.

84-4704. Expenditures from special fund, when—purpose—approval of electors, when. No expenditures for any purpose whatever shall be made from such special street fund until after April 1, 1947. The city or town council or commission of any city or town having such fund may thereafter provide for the expenditure thereof for the purpose of constructing, improving, repairing and maintaining the public streets, avenues, alleys, and ways of the city or town; provided that no expenditure in excess of ten thousand dollars (\$10,000.00) for any single purpose as defined in section 16-2009, shall be made from such fund without the approval of a majority of the electors of the city or town voting on the question of such expenditure at an election to be provided by law.

History: En. Sec. 3, Ch. 172, L. 1945; amd. Sec. 1, Ch. 107, L. 1947.

84-4705. Budget required. After April 1, 1947, the council or commission of any city or town having such special street fund may adopt a budget making appropriations therefrom for the construction, improvement, repair and maintenance of the public streets, avenues, alleys and ways in the city or town for the remaining portion of the then current fiscal year, notice thereof being given, hearing thereon had and such budget adopted in manner provided for emergency budgets by section 11-1409; for each fiscal year thereafter when any moneys are to be expended therefrom, the city or town budget shall contain and set forth in the annual budget a separate section as a budget for such special street fund, and all of the provisions of the city budget law shall apply thereto; provided, however, that at any time after the close of the fiscal year ending June 30, 1947, the council or commission may in their discretion, instead of providing a separate budget for the expenditure of any moneys then in such special fund, transfer the same to the street fund.

History: En. Sec. 4, Ch. 172, L. 1945;
amd. Sec. 1, Ch. 107, L. 1947.

84-4706. (5195) Cities and towns may raise money by taxation in excess of levy now permitted, how. Whenever the council of any city or town shall deem it necessary to raise money by taxation, in excess of the levy now allowed by law, for any purpose for which said city or town is authorized to expend moneys raised by taxation in said city or town, it shall submit the question of such additional levy to the legal voters of such city or town who are taxpaying freeholders therein, either at the regular annual election held in said city or town, or at a special election called for that purpose by the council of such city or town; provided, however, that such additional levy shall not exceed five mills.

History: En. Sec. 1, Ch. 12, L. 1919; References
re-en. Sec. 5195, R. C. M. 1921. Wibaux Improvement Co. v. Breitenfeldt, 67 M 206, 208, 215 P 222.

84-4707. (5196) Notice of election. Where the question of making such additional levy is so submitted, notice thereof shall be given by publication for at least thirty days prior to such election in every newspaper published in said city or town, and by posting a like notice for the same period of time in a public place in each ward of said city or town.

History: En. Sec. 2, Ch. 12, L. 1919;
re-en. Sec. 5196, R. C. M. 1921.

84-4708. (5197) Submission of question to state object of levy—use of funds—balance. The submission of said question shall expressly provide for what purpose such additional levy is to be made, and, if authorized, the money raised for such additional levy shall be used for that specific purpose only; provided, that if any balance remain on hand after the purpose for which said levy was made has been accomplished, such balance may, by vote of the council, be transferred to any other fund of said city or town.

History: En. Sec. 3, Ch. 12, L. 1919;
re-en. Sec. 5197, R. C. M. 1921.

84-4709. (5198) Separate ballots when levy for more than one purpose—form of ballot and marking—conduct of election. If at any time it is

desired to submit the question of additional levies for more than one purpose, such propositions shall be submitted on separate ballots, each of which ballots shall be in substantially the following form: Shall the city (or town) council be authorized to make a levy of (here insert the number) mills taxes in addition to the regular levy now authorized by law for the purpose of (here insert the purpose for which the additional levy is to be made.)

☐

Against Additional Levy.

☐

For Additional Levy.

The voters shall mark the ballot or ballots in the same manner as other ballots are marked under the election laws of this state. The election shall be held and the votes canvassed and returned as in other city or town elections. If the majority voting on the question are in favor of such additional levy or levies, the city or town council shall so certify, and such additional levy or levies of taxes shall be made by the city or town council for that year.

History: En. Sec. 4, Ch. 12, L. 1919;
re-en. Sec. 5198, R. C. M. 1921.

84-4710. (5199) Registration of electors. The council may provide by ordinance for the registration of qualified electors who are tax-paying freeholders in such city or town, and no person shall be entitled to register or vote at such election who is not such tax-paying freeholder and qualified elector.

History: En. Sec. 5, Ch. 12, L. 1919;
re-en. Sec. 5199, R. C. M. 1921.

Elections 97.
29 C.J.S. Elections § 38.

84-4711. (5199.1) Qualifications for voting on creation or increasing municipal or school indebtedness. That from and after the passage and approval of this act, only such registered electors of the city, town, school district, or other municipal corporation whose names appear upon the last preceding assessment roll shall be entitled to vote upon any proposal to create or increase any indebtedness of city, town, school district or other municipal corporation, required by law to be submitted to a vote of the electors thereof.

History: En. Sec. 1, Ch. 98, L. 1923;
am. Sec. 1, Ch. 47, L. 1929.

of Helena et al., 89 M 109, 112 et seq.,
297 P 455.

Operation and Effect

Held, on original application for writ of injunction, that the provisions of this section et seq., and not sections 11-715, 5278 and 5279 R. C. M. 1935 (since repealed), govern the procedure to be followed for the registration of electors and their qualifications in a special city election called for the purpose of submitting to them the question of the issuance of city water plant bonds. *Weber v. City*

Id. By the enactment of chapter 47, laws of 1929, amendatory of chapter 98, laws of 1923 (this section), the legislature intended to provide the procedure for the holding of all elections called for the purpose of determining whether indebtedness of the political units therein mentioned shall be created or increased when the approval of the electors is required by law, including the issuance of city water bonds.

Id. Held, that where a city mistakenly

called and conducted a special election submitting the question of increasing its indebtedness by the issuance of bonds for water plant purposes under sections of the revised codes which had been superseded by this section, none of the provisions of which chapter were observed, the election was void irrespective of the good faith in which the city authorities acted.

References

State ex rel. Henderson v. Dawson County, 87 M 122, 142, 286 P 125.

Elections⇒83.

29 C.J.S. Elections § 29.

84-4712. (5200) Special taxes and assessments. The council may also assess and levy the special taxes or assessments provided for in Title 11, sections 44-301 to 44-303, inclusive, sections 62-201 to 62-210, inclusive, and this chapter.

History: En. Sec. 4815, Pol. C. 1895; re-en. Sec. 3343, Rev. C. 1907; re-en. Sec. 5200, R. C. M. 1921.

Operation and Effect

Held, under this section, that a city had the power to levy special taxes for the purpose of paying interest on bonded in-

debtedness and creating a sinking fund, and that the contention that the taxing power of a city of a class other than the first class was limited to a ten mill levy for all purposes by section 84-4701, has no merit. First Nat. Bank of Glendive v. Sorenson, 65 M 1, 6 et seq., 210 P 900.

84-4713. (5201) Taxes in cities and towns which have exceeded the constitutional limit of indebtedness. All taxes heretofore levied and collected, or to be collected for municipal and administrative purposes by any city or town, the indebtedness of which equals or exceeds the limit provided in section 6, article XIII of the constitution, may be used in payment of current expenses during the fiscal year for which said taxes were levied, the same as though a special levy had been made for each of said purposes. And the council of any such city or town is hereby authorized to designate the amount of said general levy applicable to each of said purposes, and the amount so designated shall constitute a special fund for the special purpose of paying the expenses incurred for such purpose, and such expenses shall be payable out of such fund and not otherwise; provided, that the aggregate of all taxes authorized for general municipal and administrative purposes shall not exceed one and one-half per cent annually upon the per centum of the assessed value of all taxable property in such city or town.

History: En. Sec. 1, Ch. 106, L. 1907; re-en. Sec. 3344, Rev. C. 1907; re-en. Sec. 5201, R. C. M. 1921; amd. Sec. 2, Ch. 175, L. 1925.

Municipal Corporations⇒864(2).

44 C. J. Municipal Corporations § 4061.

84-4714. (5202) City authorized to levy special taxes. Hereafter any city, the indebtedness of which equals or exceeds said limit, shall be authorized to levy and collect special taxes for municipal and administrative purposes, and the city council in making such levy shall designate the amount thereof for each of said purposes, and each tax, when collected, shall constitute a fund out of which the expenses incurred for the purpose for which such tax was levied shall be paid. The expenses incurred for any such purpose shall be paid out of the fund so to be provided therefor, and not otherwise.

History: En. Sec. 2, Ch. 21, L. 1903; re-en. Sec. 3345, Rev. C. 1907; re-en. Sec. 5202, R. C. M. 1921.

Municipal Corporations⇒864(1).

44 C.J. Municipal Corporations § 4060 et seq.

84-4715. (5203) Annual tax—equalization and collection. The council has power to levy, collect, and equalize annually taxes on all the property in the city or town taxable for state and county purposes, and may by ordinance provide for the levy, assessment, equalization, and collection of the same.

History: En. Sec. 4860, Pol. C. 1895; re-en. Sec. 3346, Rev. C. 1907; re-en. Sec. 5203, R. C. M. 1921.

Operation and Effect

Under this section and section 84-4729, as the latter stood before its amendment, a town council had power to levy taxes, and taxes levied for street purposes could not be worked out by taxpayers, if they elected to do so under the law as it then existed. Town of White Sulphur Springs v. Pierce, 21 M 130, 132, 53 P 103.

This section and city ordinances must

yield to chapter 96, laws of 1923, fixing the time and method of collecting taxes and interest thereon. Thomas v. City of Missoula et al., 70 M 478, 482, 226 P 213.

References

State ex rel. Malott v. Cascade Co., 94 M 394, 411, 22 P 2d 811.

Municipal Corporations—956(1).

44 C.J. Municipal Corporations § 4271 et seq.

38 Am. Jur. 67, Municipal Corporations, §§ 381 et seq.

84-4716. (5204) Levy, etc., to be made under this chapter. Until the passage of such ordinance the levy, assessment, equalization, and collection of municipal taxes are, and the proceedings for such purposes must be, as provided in this chapter.

History: En. Sec. 4861, Pol. C. 1895; re-en. Sec. 3347, Rev. C. 1907; re-en. Sec. 5204, R. C. M. 1921.

Municipal Corporations—968(1) et seq.
44 C.J. Municipal Corporations, § 4375 et seq.

84-4717. (5205) Basis of taxation. The assessment made by the county assessor for state and county purposes is the basis of taxation for cities and towns for the property situated therein.

History: En. Sec. 4862, Pol. C. 1895; re-en. Sec. 3348, Rev. C. 1907; re-en. Sec. 5205, R. C. M. 1921.

Operation and Effect

The municipal authorities of an incorporated city could make a legal assessment in electing to take the assessment made by the county and state assessing authorities as the basis for the levy of municipal taxes on property within such city; and the levy of lawful taxes thereon by such city, according to the provisions of its charter and ordinances, constituted a legal levy. Lockey v. Walker, 12 M 577, 583, 31 P 639.

Under this section and section 84-4729, as it stood prior to its amendment, the assessment of property of a city was not completed until the date of the resolution of the city council fixing and levying the

amount of taxes to be levied and assessed for such year. State ex rel. City of Butte v. Johnson, 16 M 570, 572, 41 P 706.

Under the provisions of this section and other statutes applicable and in force from time to time, the basis of taxation for a city or town has been the valuation made by the county assessor for state and county purposes. The city or town council has had no authority to amend or change the items listed in the roll furnished by him, its office being merely to ascertain the rate of taxation necessary to produce the amount required to meet the expenses of the city or town government, and to certify it to the county treasurer. Lockey v. City of Bozeman, 42 M 387, 397, 113 P 286.

Municipal Corporations—972(2).

44 C.J. Municipal Corporations § 4395.

84-4718. (5206) Duty of county assessor. It is the duty of the county assessor, in making the assessment book, to designate therein the real and personal property, stating each separately and distinctly, situated in the cities and towns within the county.

History: En. Sec. 377, 5th Div. Comp. Stat. 1887; amd. Sec. 4863, Pol. C. 1895;

re-en. Sec. 3349, Rev. C. 1907; re-en. Sec. 5206, R. C. M. 1921.

References

State ex rel. Blair v. Kuhr, 86 M 377, 283 P 758. Municipal Corporations 972(3).
44 C.J. Municipal Corporations § 4397.

84-4719. (5207) Copies of assessment books to be furnished cities and towns. On or before the second Monday in July of each year the assessor must furnish to all cities of the third class and towns within his county which shall make written request for the same, on or before the first Monday in April of each year, a complete certified copy of his assessment book, so far as such assessment book pertains to property within the limits of said cities and towns.

History: En. Sec. 1, Ch. 69, L. 1911; Municipal Corporations 971(1).
re-en. Sec. 5207, R. C. M. 1921. 44 C.J. Municipal Corporations § 4369.

84-4720. (5208) Charge of assessor for making copies. The assessor may charge such cities and towns five cents per folio of one hundred words for each copy of his assessment book furnished such cities and towns as provided in the preceding section.

History: En. Sec. 2, Ch. 69, L. 1911;
re-en. Sec. 5208, R. C. M. 1921.

84-4721. (5209) Equalization of taxes. The equalization of assessments of property made by the county board of equalization applies to the assessment of property in any city or town, and must be taken as the equalization thereof. But the council may at any time after the adjournment of said board, upon good cause shown, reduce the city or town taxes or penalties thereon as is just and equitable, or order any tax that has been improperly assessed or paid by mistake to be refunded.

History: En. Sec. 4865, Pol. C. 1895; Municipal Corporations 974(1).
re-en. Sec. 3351, Rev. C. 1907; re-en. Sec. 44 C.J. Municipal Corporations § 4413
5209, R. C. M. 1921. et seq.

84-4722. (5210) Affidavit of aggrieved party. The person aggrieved must first make an affidavit stating the facts, which must be filed with the clerk.

History: En. Sec. 4866, Pol. C. 1895; Municipal Corporations 974(3).
re-en. Sec. 3352, Rev. C. 1907; re-en. Sec. 44 C.J. Municipal Corporations § 4421.
5210, R. C. M. 1921.

84-4723. (5211) Preparation of assessment book. It is the duty of the county clerk, on or before the first Monday in October in each year, to make a duplicate of the corrected assessment book for each city in the county, the treasurer of which is required by ordinance of such city to collect its taxes. Such book shall be styled "The Duplicate Assessment Book for the City of _____," and must contain a copy of the "corrected assessment book" of the county as far as the same refers to city property.

History: En. Sec. 4867, Pol. C. 1895; assessment book required by this and the
amd. Sec. 1, p. 223, L. 1897; re-en. Sec. following sections at the same time the
3353, Rev. C. 1907; re-en. Sec. 5211, R. C. original or duplicate is delivered to the
M. 1921. county treasurer. State ex rel. City of
Butte v. Weston, 29 M 125, 129, 74 P 415.

Operation and Effect

It is the duty of the county clerk to deliver to the city treasurer the duplicate

References

Cited or applied as section 4867, political code, before amendment, in State ex

rel. City of Butte v. Johnson, 16 M 570,
573, 41 P 706.

Municipal Corporations § 972(1).
44 C.J. Municipal Corporations § 4395.

84-4724. (5212) Book to be furnished by city. Such duplicate must be made in a book furnished by the city clerk of each city in the county, and ruled in columns specifying the different funds so that the city treasurer may extend the same and collect the taxes.

History: En. Sec. 4868, Pol. C. 1895; amd. Sec. 1, p. 223, L. 1897; re-en. Sec. 3354, Rev. C. 1907; re-en. Sec. 5212, R. C. M. 1921.

ical code, before amendment, in State ex rel. City of Butte v. Johnson, 16 M 570, 573, 41 P 706; as amended, in State ex rel. City of Butte v. Weston, 29 M 125, 126, 74 P 415.

References

Cited or applied as section 4868, polit-

84-4725. (5213) Delivery of book to city treasurer. The county clerk must deliver such duplicate assessment book to each city treasurer, and take his receipt therefor, having attached thereto the affidavit similar to the one set out in section 84-4006.

History: En. Sec. 4869, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3355, Rev. C. 1907; re-en. Sec. 5213, R. C. M. 1921.

affidavit identical with the one required by section 84-4006, but merely requires an affidavit covering all the facts showing that the clerk had done his duty in making the copy of the assessment book. State ex rel. City of Butte v. Weston, 29 M 125, 131, 74 P 415.

Operation and Effect

The word "similar" in this section does not require the county clerk to make an

84-4726. (5214) Collection of taxes—delinquent taxes. The county treasurer of each county must collect the tax levied by all cities and towns in his respective county, except in case of such cities of the first and second and third classes as may provide by ordinance for the city treasurer to collect the taxes from such corrected assessment book. The county treasurer must collect such city or town taxes, including unpaid road poll-taxes, at the same time as the state and county taxes, with the same penalties and interest in case of delinquency. All publications for sales for delinquent taxes shall include such city or town taxes, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county, and state taxes, with the penalties, interest, and cost of advertising provided by law. All moneys received from sales, redemptions, and from sales by the county, after deed given by the county treasurer as provided by law, shall be credited to the state, county, and city or town, pro rata, in the same proportions as provided in section 84-4189.

History: En. Sec. 4870, Pol. C. 1895; amd. Sec. 1, Ch. 24, L. 1907; Sec. 3356, Rev. C. 1907; re-en. Sec. 5214, R. C. M. 1921.

Operation and Effect

Under this section, the county treasurer must collect taxes for a city or town which has not by ordinance placed the duty of collection upon its own treasurer, no provision, however, being made as to when the money so collected must be turned over to the city or town treasurer. Held, that the county treasurer must within a reasonable time after collection compute

the amount due the city or town and pay it over to the proper custodian, and that the lapse of one month after collection of the bulk of the city or town taxes is not a reasonable time within which to perform that duty. State v. McNamer, 62 M 490, 494, 205 P 951.

Where a city has failed to provide by ordinance for the collection of its taxes by its own treasurer, the treasurer of the county in which such city is situated must, under this section, collect and pay them to the city treasurer without delay. State v. McFarlan, 78 M 156, 158 et seq., 252 P 805.

"Tax" and "Taxes"

Assessments for special city improvements which under section 11-2233, the county treasurer is required to collect, held to fall within the meaning of the words "tax" and "taxes" as employed in this section, making it the duty of the county treasurer to collect city taxes where a city has not imposed that duty upon its own treasurer. *State v. McFarlan*, 78 M 156, 158 et seq., 252 P 805.

References

Cited or applied as section 4870, political code, before amendment in *Town of White Sulphur Springs v. Pierce*, 21 M 130, 132, 53 P 103; *State ex rel. City of Butte v. Weston*, 29 M 125, 126, 74 P 415; *Lockey v. City of Bozeman*, 42 M 387, 397, 113 P 286; as section 3356, in *City of Butte v. Bennetts*, 51 M 27, 30, 149 P 92; *School District No. 1 v. City of*

Helena, 87 M 300, 307, 287 P 164; *State ex rel. City of Butte v. Healy*, 105 M 227, 232, 70 P 2d 437.

Municipal Corporations 978(1), 980 (4, 5).

44 C.J. *Municipal Corporations* §§ 4455 et seq., 4491 et seq.

Validity of tax sale of land acquired by public corporation after levy and before sale. 2 ALR 1535.

Mandamus to compel collection of taxes. 58 ALR 117.

Lien for tax imposed by one taxing unit as affected by lien or sale for tax imposed by another taxing unit of the same state. 135 ALR 1464.

Right of delinquent taxpayer or other person having an original interest in the property to purchase at, or acquire and hold, as against taxing unit, title derived from or through, tax sale. 136 ALR 1145.

84-4727. (5215.1) Delinquent tax—sales of property taxed or specially assessed by cities or towns. Whenever, in a city or town whose treasurer collects its own taxes or special assessments, or both thereof, any such taxes or assessments shall become delinquent, no tax sale shall be held by such city or town treasurer therefor, but such city or town treasurer must, within ten (10) days after the date the same become delinquent, certify all such delinquent taxes and assessments to the county treasurer of the county in which the city or town is situated. Such certificate shall contain the description of each lot or parcel of land on which any tax or assessment has become delinquent, the name and address of the person to whom assessed, the date when the same became delinquent, the amount of the delinquent tax or assessment, the penalty to be added thereto, and the total amount of such delinquent tax or assessment with penalty added. If any special assessment is payable in installments and any installment thereof becomes delinquent, the amount of such delinquent installment shall be included in such certificate, provided, however, that if the city or town council, by the adoption of an appropriate resolution shall declare the whole of the assessment remaining unpaid to be delinquent, as provided in section 11-2233, then the whole of the assessment remaining unpaid shall be included in such certificate.

Upon receipt of such certificate the county treasurer shall enter such delinquent taxes and assessments in the delinquent tax list of the county, and the county treasurer in selling property for delinquent taxes must include all such city and town delinquent taxes and assessments, there being but one sale for each piece of property, such sale to cover the aggregate of such city or town, county and state taxes and special assessments, with the penalties, interest and costs provided by law.

History: En. Sec. 1, Ch. 148, L. 1927.

Operation and Effect

Held in an action in mandamus to compel a county treasurer, under this section to spread upon the delinquent taxroll of

the county certain assessments for special city improvements which became delinquent on a city lot after the county had bought it in at a tax sale that special assessments are not taxes within the meaning of section 84-4161, that therefore the

liens of such assessments were extinguished upon issuance of the tax deed, and hence that the county treasurer could not

be compelled to spread the assessments upon his records. *State v. Jeffries*, 83 M 111, 114, 270 P 638.

84-4728. (5215.2) Collection of delinquent taxes by cities authorized.

All cities in the state of Montana, who by ordinance provide for the collection of city taxes and assessments, are hereby authorized and empowered to solicit payment, ask for, receive and receipt for delinquent taxes and assessments due any such city, and upon receipt of payment thereof by the city treasurer of such city, it shall be the duty of such city treasurer to immediately certify to the county treasurer of the county in which such city is situated, the fact of such payment with the amount thereof, a description of the property charged with such delinquent taxes or assessments so paid and the name of the person to whom the same were assessed; provided, however, that nothing in this act is intended to or shall prevent the county treasurer of the county in which such city is situated to collect such delinquent taxes or assessments, but is intended as an aid to the collector of such delinquent taxes and assessments.

History: En. Sec. 1, Ch. 145, L. 1933.

84-4729. (5216) Fixing amount of tax levy—certification to county or city clerk. The council must on or before the second Monday of August of each year, by resolution, determine the amount of the city or town taxes for all purposes, to be levied and assessed on the taxable property in the city or town, for the current fiscal year and the city or town clerk must at once certify to the county clerk a copy of such resolution and the county treasurer must collect said taxes as in this chapter provided. Provided, that in cities where the council has provided by ordinance for the collection of such taxes by the city treasurer, the city clerk must certify a copy of such resolution to said city treasurer.

History: En. Sec. 379, 5th Div. Comp. Stat. 1887; amd. Sec. 4872, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3358, Rev. C. 1907; amd. Sec. 1, Ch. 1, L. 1919; amd. Sec. 1, Ch. 9, Ex. L. 1919; amd. Sec. 1, Ch. 165, L. 1921; re-en. Sec. 5216, R. C. M. 1921; amd. Sec. 1, Ch. 49, L. 1925.

Operation and Effect

The requirement of this section that after the city council had determined the amount of city taxes to be levied on city property for all purposes, the city clerk must certify the resolution passed by the council in that behalf to the county clerk, held to have been sufficiently complied with by his attestation, the terms, "certify" and "attest" meaning substantially

the same thing, to-wit, that what appears in the instrument is genuine or true. *Morse v. Kroger et al.*, 87 M 54, 59, 285 P 185.

References

Cited or applied as section 4872, political code, before amendment, in *State ex rel. City of Butte v. Johnson*, 16 M 570, 571, 41 P 706; *Town of White Sulphur Springs v. Pierce*, 21 M 130, 132, 53 P 103; *First Nat. Bank of Glendive v. Sorenson*, 65 M 1, 6, 210 P 900; *State v. McFarlan*, 78 M 156, 161, 252 P 805.

Municipal Corporations 269(1).

44 C.J. *Municipal Corporations* § 4378.

84-4730. (5217) Fiscal year. The fiscal year of cities and towns commences on the first day of July of each year, and ends on the last day of June of each year.

History: En. Sec. 4873, Pol. C. 1895; 3359, Rev. C. 1907; re-en. Sec. 5217, R. amd. Sec. 1, p. 224, L. 1897; re-en. Sec. C. M. 1921; amd. Sec. 1, Ch. 25, L. 1927.

Cross-Reference

Fiscal year, sec. 11-1402.

Municipal Corporations⇒879.

44 C.J. Municipal Corporations § 4109 et seq.

84-4731. (5218) Annual appropriation—manner and time of making. The council must, during the month of July in each fiscal year, pass an ordinance to be known as the "Annual appropriation for the of for the fiscal year beginning July 1, 19.....," in which ordinance there must be appropriated enough money to defray the expenses or liabilities of the city or town for such fiscal year, and there must be specified therein the amount appropriated for each separate object or fund, and the salary or compensation to be paid to each officer of the city or town.

History: En. Sec. 380, 5th Div. Comp. Stat. 1887; amd. Sec. 4874, Pol. C. 1895; re-en. Sec. 3360, Rev. C. 1907; re-en. Sec. 5218, R. C. M. 1921; amd. Sec. 2, Ch. 25, L. 1927.

Operation and Effect

The fact that the city council, in accordance with this section, appropriated a sum to pay for water furnished under

a contract, does not make the city liable therefor, since the contract out of which the liability arose is void, and no lawful authority to pay it exists. State ex rel. Helena W. W. Co. v. City of Helena, 24 M 521, 537, 63 P 99.

Municipal Corporations⇒890.

44 C.J. Municipal Corporations § 4119.

84-4732. (5219) Road poll-tax. All able-bodied male inhabitants of a city or town, between the ages of twenty-one and forty-five years, must pay an annual road poll-tax not exceeding three dollars.

History: En. Sec. 4875, Pol. C. 1895; re-en. Sec. 3361, Rev. C. 1907; re-en. Sec. 5219, R. C. M. 1921.

NOTE.—This section held a violation of section 4, article XII of the Constitution in that the legislature levied directly a road tax of \$3.00. Opinions of Attorney General Vol. 18, No. 178.

in the exclusive jurisdiction of the municipality through its council. State ex rel. City of Butte v. Healy, 105 M 227, 231, 70 P 2d 437.

References

Cited or applied as section 4875, political code, in Snook v. City of Anaconda, 26 M 128, 134, 66 P 756; as section 3361, revised codes, in Ford v. City of Great Falls, 46 M 292, 304, 127 P 1004.

Cross-References

Fire department members exempt from poll tax, sec. 11-2004.

Militia men exempt from poll tax, sec. 77-403.

Highways⇒150.

40 C.J.S. Highways § 306.

51 Am. Jur. 435, Taxation, § 412.

Exclusive Jurisdiction Over Street Work
With relation to work to be done upon the streets of a city, such streets are with-

Poll tax as property or privilege tax. 103 ALR 103.

84-4733. (5220) List of persons liable for poll-tax. The city clerk must make a list of all persons liable for such tax, and present the same to the council for inspection and correction at a regular or special meeting to be held not later than the third Monday of May. On or before the first regular meeting in June the council must direct a copy of such list, as corrected, certified by the clerk, to be delivered to the city treasurer, and the city treasurer must forthwith collect such taxes from the persons named in the list, and from such other persons liable for the same as he may add thereto; provided, that any person who is assessed for a property tax in the city may pay such poll-tax at the time he pays his general tax, and in such case the poll-tax shall be added upon the assessment list to other taxes of persons liable therefor paying taxes upon real and personal

property, by the county clerk upon a list of the names of persons liable for the same being certified to by the city clerk.

History: En. Sec. 436, 5th Div. Comp. Stat. 1887; amd. Sec. 4876, Pol. C. 1895; amd. Sec. 1, p. 224, L. 1897; re-en. Sec. 3362, Rev. C. 1907; re-en. Sec. 5220, R. C. M. 1921.

References

Cited or applied as section 4876, political code, before amendment, in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756.

84-4734. (5221) Powers of city clerk and treasurer. The city or town clerk, in making such list, and the city or town treasurer in collecting such tax, have the same powers in reference thereto as the county assessor and county treasurer have in assessing and collecting the poll-tax provided for in sections 84-4201 to 84-4214.

History: En. Sec. 4877, Pol. C. 1895; re-en. Sec. 1, p. 225, L. 1897; re-en. Sec. 3363, Rev. C. 1907; re-en. Sec. 5221, R. C. M. 1921; amd. Sec. 1, Ch. 47, L. 1937.

References

Cited or applied as section 4877, political code, before amendment, in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756.

84-4735. (5222) Poll-tax—how expended. The money so collected must be expended for street purposes in the city or town. No street or alley in a city or town is a county road or a part thereof, nor constitutes a part of a road district of a county.

History: En. Sec. 4878, Pol. C. 1895; re-en. Sec. 3364, Rev. C. 1907; re-en. Sec. 5222, R. C. M. 1921.

City of Butte v. Healy, 105 M 227, 231, 70 P 2d 437.

References

Cited or applied as section 4878, political code in *Snook v. City of Anaconda*, 26 M 128, 134, 66 P 756; as section 3364, revised codes, in *Ford v. City of Great Falls*, 46 M 292, 304, 127 P 1004.

Exclusive Jurisdiction Over Street Work

With relation to work to be done upon the streets of a city, such streets are within the exclusive jurisdiction of the municipality through its council. State ex rel.

84-4736. (5223) Work on the streets, etc. The council has power to order any work provided in this code to be done upon the streets, alleys, or public places of a city or town.

History: En. Sec. 4879, Pol. C. 1895; re-en. Sec. 3365, Rev. C. 1907; re-en. Sec. 5223, R. C. M. 1921.

26 M 128, 134, 66 P 756; as section 3365, revised codes, in *Ford v. City of Great Falls*, 46 M 292, 304, 127 P 1004.

References

Cited or applied as section 4879, political code, in *Snook v. City of Anaconda*,

Municipal Corporations 269(2).
40 C.J. Highways § 228 et seq.

84-4737. (5224) License tax may be levied. The council may, by ordinance, license all industries, pursuits, professions and occupations, as provided in section 11-904, and the city treasurer must collect the same in the manner and at the time prescribed by ordinance. The city clerk must issue such licenses.

History: En. Sec. 4900, Pol. C. 1895; re-en. Sec. 3366, Rev. C. 1907; re-en. Sec. 5224, R. C. M. 1921.

pose as a regulation, the court will not adjudge it a revenue measure. *City of Bozeman v. Nelson*, 73 M 147, 155, 237 P 528.

Operation and Effect

What is a reasonable license fee must depend largely upon the sound discretion of the city council, having reference to the circumstances and necessities of the case. Unless, however, the amount is manifestly unreasonable, in view of its pur-

Licenses 5½.

37 C.J. *Licenses* § 16 et seq.

37 Am. Jur. 956, *Municipal Corporations*, §§ 305 et seq.

Validity of ordinance interfering with privacy in restaurants. 5 ALR 965.

Regulations concerning location of laundries. 6 ALR 1597.

Public regulation or authorization of gas filling stations. 18 ALR 101.

Regulation of barbers. 20 ALR 1111.

Licensing and regulation of pool and billiard rooms and bowling alleys. 20 ALR 1482.

Validity of ordinance in relation to undertaker or embalmers. 23 ALR 71.

Regulation of junk dealer. 30 ALR 1427.

Validity of regulations as to plumbers and plumbing. 36 ALR 1342.

Public regulation of dry cleaning and dyeing establishments. 49 ALR 110.

Municipal regulation of sale of poison, drugs, or medicines. 54 ALR 735.

Validity of ordinance fixing closing hours for certain kinds of business. 55 ALR 242.

Regulation of beauty shops or specialists. 79 ALR 1126.

Regulation of house to house canvassing by peddlers, etc. 88 ALR 183.

Municipal regulation of electricians and the installation of electrical work. 96 ALR 1506.

Regulation and sale of newspapers on the streets. 107 ALR 1275.

Regulation of auctions and auctioneers. 111 ALR 473.

Regulation of tourist or trailer camps. 115 ALR 1398.

Regulation of the sale of flowers or florist business. 124 ALR 547.

CHAPTER 48

FREIGHT LINE COMPANIES GENERAL PROPERTY TAX

- Section 84-4801. Freight line companies defined.
 84-4802. Situs of cars for taxation purposes.
 84-4803. Freight line companies to file statements—contents.
 84-4804. Railroads to furnish record of mileage of freight line company cars.
 84-4805. Construction of terms used in law relative to earnings.
 84-4806. Determination of value of freight line companies—assessment.
 84-4807. Procedure on failure to file statement.
 84-4808. Determination of tax levy—statement of assessment and tax to be sent companies—protest as prerequisite to action.
 84-4809. Tax on gross earnings may be paid in lieu of other taxes.
 84-4810. Retroactive nature of tax.
 84-4811. Compelling attendance of officers of freight line companies—penalty.
 84-4812. Certification of valuation for taxation.
 84-4813. State treasurer to collect tax—exemption.
 84-4814. Repealing clause.
 84-4815. When tax becomes delinquent—penalty and interest—seizure and sale of property.
 84-4816. Legal proceedings to enforce payment of tax.
 84-4817. Disposition of proceeds of tax.

84-4801. (2097) Freight line companies defined. Any person or persons, joint-stock company, association, or corporation, wherever organized or incorporated, engaged in the business of operating cars, or engaged in the business of furnishing or leasing cars, not otherwise listed for taxation in Montana, for the transportation of freight (whether said cars be owned by such company or any other person or company) over any railway line or lines, in whole or in part within this state, such line or lines not being owned, leased, or operated by such company, whether such cars be termed flat, coal, ore, tank, stock, gondola, furniture, or refrigerator-car, or by some other name, shall be deemed a freight line company.

History: En. Sec. 1, Ch. 5, Ex. L. 1919; re-en. Sec. 2097, R. C. M. 1921.

Operation and Effect

Where foreign corporation was not engaged in transportation of commodities within state but owned freight cars which were furnished to common carriers, corporation's cars were not taxed in proportion

to amount of and actual physical presence and use within several taxing districts of state, freight cars owned by others were taxed on different basis and state did not levy any tax against freight cars owned by railroads not operating within state but which were furnished for compensation to railroads operating within state, the tax against cars of foreign cor-

84-4801
(2097 RCM'35)
New Matter
SL 43, C. 137
Secs. 1-11
PP. 288-295

poration was discriminatory and denied due process and equal protection. State v. North American Car Corp., — M —, 164 P 2d 161, 166.

Taxation—142, 146.

61 C.J. Taxation §§ 294, 309.

51 Am. Jur. 776, Taxation, §§ 870 et seq.

84-4802. (2098) **Situs of cars for taxation purposes.** For the purpose of taxation, all cars used exclusively within this state, or used partially within and without this state, are hereby declared to have a situs in the state, the value of such property, for the purpose of taxation, to be determined as provided in the three succeeding sections of this code.

History: En. Sec. 2, Ch. 5, Ex. L. 1919;
re-en. Sec. 2098, R. C. M. 1921.

84-4802
(2098 RCM'35)
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84-4803. (2099) **Freight line companies to file statements—contents.** Every freight line company as hereinbefore defined shall annually, between the first and thirtieth day of April, under the oath of the person constituting such company, if a person, or under the oath of the president, secretary, treasurer, superintendent, manager, or chief officer of such association, joint-stock company, or corporation, file with the state board of equalization, a statement in such form as the state board of equalization may require and prescribe, showing the following:

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1. The name of the person or persons, association, joint-stock company or corporation.

2. Under the laws of what state or country organized or existing.

3. The location of its principal office.

4. The location of its principal office in this state, if any.

5. The name and postoffice address of the president, secretary, auditor, treasurer, superintendent, general manager, or chief officer.

6. The total gross earnings received from all sources from the operation of such freight line company within this state for the year next preceding the first day of January.

7. The aggregate number of miles traveled within the state of Montana by its cars during the preceding calendar year and the aggregate number of miles over each railroad in the state; and the total number of miles traveled by its cars during the preceding calendar year wherever operated.

8. The average number of miles traveled by the cars of each class of its cars during the preceding year. The number of cars necessary for the mileage traveled within the state of Montana under the circumstances that ordinarily attend the use of such cars, and where different classes of cars are used by said company, as to the matters embraced in this and the preceding paragraph, it shall furnish the required information as to each class of said cars on the forms prescribed and furnished by the state board of equalization.

9. The full and true value on the first day of January next preceding, of the said number of cars necessary to provide for the mileage to be reported as required by paragraph seven (7) of this section.

10. The real estate, personal property, structures, machinery, fixtures, and appliances, owned by said company, within the state, and the location and the actual value thereof, and in what county, municipality,

road district, school district or other taxing district where the same was located on the first day of January next preceding.

11. Showing in detail for the year preceding the first day of January:

- A. The total gross earnings of the company.
- B. Net income for such year and the amount of dividends declared.
- C. The cost of operating the company.
- D. Capital stock authorized; capital stock paid in; number of shares of stock issued; amount owned by the company and par value per share.
- E. Funded debt.

12. Such other facts and information as the state board of equalization may require in the form of return prescribed by it.

History: En. Sec. 3, Ch. 5, Ex. L. 1919; Taxation 388, 392.
 amd. Sec. 1, Ch. 146, L. 1921; re-en. Sec. 61 C.J. Taxation §§ 855, 861.
 2099, R. C. M. 1921; amd. Sec. 1, Ch. 185,
 L. 1925; amd. Sec. 1, Ch. 26, L. 1935.

84-4804
 (2099.1 RCM
 '35)
 New Matter
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84-4804. (2099.1) Railroads to furnish record of mileage of freight line company cars. That it shall be the duty of all railroads operating in the state of Montana to furnish to the state board of equalization, on blanks to be furnished by the said board to the railroad companies operating in the state of Montana, a true and accurate record of the car mileage made by the cars of the said freight line companies over their rails within the state of Montana during the preceding calendar year, said reports to be duly attested by the proper officers of said railroad companies and which shall be filed in the office of the state board of equalization on or before the first day of May of each calendar year.

History: En. Sec. 2, Ch. 26, L. 1935.

84-4805
 (2100 RCM'35)
 New Matter
 SL '49, C. 137
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84-4805. (2100) Construction of terms used in law relative to earnings. That terms "total gross earnings received from all sources from the operation of such freight line company within this state," and "total gross earnings," wherever used in this act, are hereby declared and shall be construed to mean all earnings on business beginning and ending within the state, and a proportion, based upon the proportion of mileage over which said business is done, of all earnings on all interstate business passing through or into or out of this state.

History: En. Sec. 4, Ch. 5, Ex. L. 1919;
 re-en. Sec. 2100, R. C. M. 1921.

84-4806
 (2101 RCM'35)
 New Matter
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84-4806. (2101) Determination of value of freight line companies—assessment. The state board of equalization shall, on or before the first Monday of June each year, proceed to ascertain and determine from such statements and reports the average number of cars within the state, of each freight line company for the twelve months preceding January first of each year and shall determine the full and true value of such cars that are habitually employed within this state and in arriving at the value of such cars, said board shall take into consideration the number of cars required to make the total mileage of the cars of each company for the period of one year and shall also take into consideration the gross earnings and net income of the company for preceding years, also the organic relation of the prop-

erty in the state to the whole system and such other facts as may be pertinent, all of which shall be considered by the board in fixing the value of the property of such companies. After determining the value of the property of such company within this state, the state board of equalization shall assess the property of said companies at their full and true value as so determined.

History: En. Sec. 5, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921; re-en. Sec. 2101, R. C. M. 1921; amd. Sec. 2, Ch. 185, L. 1925; amd. Sec. 1, Ch. 75, L. 1931; amd. Sec. 3, Ch. 26, L. 1935.

Constitutionality

For a discussion of the constitutionality of this section before its amendment by chapter 26, laws 1935, see *Fruit Growers Express Co. v. Brett*, 94 M 281, 287 et seq., 22 P 2d 171.

84-4807. (2102) Procedure on failure to file statement. In case of failure or refusal of any freight line company to make and file a statement required by section 84-4803 or to furnish the state board of equalization any information required by it, the said board shall inform itself as best it may, on the matters necessary to be known in order to determine the value of the property of such freight line company within this state.

History: En. Sec. 6, Ch. 5, Ex. L. 1919; 2102, R. C. M. 1921; amd. Sec. 4, Ch. 26, L. amd. Sec. 1, Ch. 146, L. 1921; re-en. Sec. 1935.

84-4808. (2103) Determination of tax levy—statement of assessment and tax to be sent companies—protest as prerequisite to action. It shall be the duty of the state board of equalization and it is authorized each year, to determine the rate of tax levy against the property of such companies which shall be equal, as nearly as may be, to the average rate of all general taxes, state, county, municipal, school and local, levied throughout the several taxing districts of the state for the preceding year and the average rate as so determined is hereby levied against the property of such companies.

The state board of equalization shall, on or before the first day of June in each year, mail to each freight line company a statement showing the total assessed value and the taxable value of the property of such company for such year, as ascertained and determined by the state board of equalization, together with the amount of the tax determined by the state board of equalization, and such freight line company may, at any time before the third Monday in June, file with said state board of equalization a protest, in writing, against such determination or assessment, or both, and the state board of equalization may, on the filing of such protest, or on its own motion, review and correct its findings in such manner as it may deem to be just and proper; provided, however, that no action of any kind shall be instituted or maintained by any freight line company to enjoin the sale of any property seized by the state treasurer on account of the nonpayment of any such tax, or to recover any tax, or any portion thereof, paid under protest, unless such freight line company shall have filed with said board a protest, in writing, in the manner and form and within the time provided in this section.

History: En. Sec. 7, Ch. 5, Ex. L. 1919; amd. Sec. 1, Ch. 146, L. 1921; re-en. Sec. 2103, R. C. M. 1921; amd. Sec. 3, Ch. 185, L. 1925; amd. Sec. 5, Ch. 26, L. 1935.

Operation and Effect

Where foreign corporation was not engaged in transportation of commodities within state but owned freight cars which

84-4807
(2102 RCM'35)
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84-4808
(2103 RCM'35)
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were furnished to common carriers, corporation's cars were not taxed in proportion to amount of and actual physical presence and use within several taxing districts of state, freight cars owned by others were taxed on different basis and state did not levy any tax against freight cars owned by railroads not operating within state but which were furnished

for compensation to railroads operating within state, the tax against cars of foreign corporation was discriminatory and denied due process and equal protection. *State v. North American Car Corp.*, ___ M ___, 164 P 2d 161, 166.

Taxation⇒388, 392, 407, 461.

61 C.J. Taxation §§ 855, 861, 863, 1008.

84-4809. (2103.1) Tax on gross earnings may be paid in lieu of other taxes. In lieu of the foregoing tax and in place thereof, each freight line company whose cars are habitually employed within this state, may, in the discretion of the state board of equalization, be required to pay a tax of five per cent (5%) of its total gross earnings within this state for the year preceding the first day of January, as determined by said board, which tax shall be in lieu of all other taxes upon its property within this state. Said tax to be determined, noticed, and paid at the time and in the manner provided in this act.

History: En. Sec. 6, Ch. 26, L. 1935.

Taxation⇒142, 146.

61 C.J. Taxation §§ 294, 309.

84-4810. (2103.2) Retroactive nature of tax. If any freight line company has failed to pay a tax upon its property within this state or any of its property has escaped taxation for any year or years within four years preceding the passage and approval of this act, then, and in that event, the state board of equalization shall at the time of assessing the property of any such freight line company for the year 1935, or at any subsequent time, fix and determine the value of the property of such company and assess the same and levy a tax thereon for each year or years its property has escaped taxation in the manner as far as practicable and in the amount, as required by this act. It being the intention of this legislature that this act shall be retroactive to this extent.

History: En. Sec. 7, Ch. 26, L. 1935.

Taxation⇒58.

61 C.J. Taxation § 122.

84-4811. (2104) Compelling attendance of officers of freight line companies—penalty. The state board of equalization, or Montana tax commission if such commission be created by this assembly, shall have power, by subpoena, to require the president, secretary, auditor, treasurer, superintendent, manager, chief officer, agent, receiver, or other officer or employee of a freight line company, to attend before the state board of equalization, or Montana tax commission if such commission be created by this assembly, and to bring with him for inspection by the state board of equalization, or Montana tax commission if such commission be created by this assembly any books, papers, or documents in his possession, or under his control, in any manner affecting, and to testify under oath concerning any matter relating to the organization or business of such freight line company. Any member of the state board of equalization, or Montana tax commission if such commission be created by this assembly, is authorized and empowered to administer such oath. Any person who shall fail, neglect or refuse to attend before the state board of equalization, or Montana tax commission if such commission be created by this assembly, when subpoenaed so to do, or who shall

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(2103.1 RCM
'35)
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84-4810
(2103.2 RCM
'35)
New Matter
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Secs. 1-11
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84-4811
(2104 RCM'35)
New Matter
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fail, neglect, or refuse to bring with him and submit for inspection by the state board of equalization, or Montana tax commission if such commission be created by this assembly, any books, papers, or documents in his possession, or under his control, affecting the organization or business of such freight line company, or who shall refuse to testify, or refuse to answer any question which may be asked him concerning the organization or business of such freight line company, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred dollars, and not more than one thousand dollars.

History: En. Sec. 8, Ch. 5, Ex. L. 1919;
amd. Sec. 1, Ch. 146, L. 1921; re-en. Sec.
2104, R. C. M. 1921.

84-4812. (2105) Certification of valuation for taxation. The state board of equalization shall, immediately after the first day of July, or, if a protest has been filed by any freight line company, immediately after the state board of equalization has finally acted thereon, enter in a book provided for that purpose, the amount of the total gross earnings of each and every freight line company for the year preceding the first day of January, the valuation of the cars of such freight line company for taxation in this state, and the amount of the tax assessed and levied against such cars, as ascertained, determined, fixed, assessed, and levied by such state board of equalization, and the state board of equalization shall, immediately thereafter certify the same to the state treasurer as the value for taxation of all cars operated, furnished or leased by such freight line company in this state, and the amount of the tax levied and assessed against the same.

History: En. Sec. 9, Ch. 5, Ex. L. 1919; 2105, R. C. M. 1921; amd. Sec. 4, Ch. 185,
amd. Sec. 1, Ch. 146, L. 1921; re-en. Sec. L. 1925.

84-4813. (2106) State treasurer to collect tax—exemption. It shall be the duty of the state treasurer, not later than five o'clock p. m. of the thirtieth day of November, to collect from each freight line company the amount of the tax levied and assessed against the cars of each such freight line company, as certified to the state treasurer by the state board of equalization, or Montana tax commission if such commission be created by this assembly, which tax shall be in lieu of all other taxes on said cars of any freight line company paying the same; provided, however, that the payment of such tax shall not exempt such freight line company, if a corporation, from the payment of any corporation license tax required to be paid by corporations doing business in this state.

History: En. Sec. 10, Ch. 5, Ex. L. 1919;
amd. Sec. 1, Ch. 146, L. 1921; re-en. Sec.
2106, R. C. M. 1921.

References

State v. North American Car Corporation, ___ M ___, 164 P 2d 161, 167.

Taxation ⌘ 550.

61 C.J. Taxation § 1304 et seq.

84-4814. (2107) Repealing clause. All acts and parts of acts in conflict herewith are hereby repealed; provided, however, that any and all taxes levied and assessed under the provisions of chapter 5, session laws extraordinary session sixteenth legislative assembly, and which have not been paid and have become delinquent, shall be collected under, and all of the

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84-4814
(2107 RCM'35)
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provisions of such chapter shall apply to the collection thereof in the same manner as though none of the provisions of such chapter had been amended by this act.

History: En. Sec. 2, Ch. 146, L. 1921;
re-en. Sec. 2107, R. C. M. 1921.

Taxation—58.
61 C.J. Taxation §§ 120 et seq.

84-4815
(2108 RCM'35)
New Matter
SL '49, C. 137
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84-4815. (2108) When tax becomes delinquent—penalty and interest—seizure and sale of property. If any tax required to be paid by any freight line company under the provisions of this act shall not be paid before five o'clock p. m. of the thirtieth day of November, such tax shall become delinquent, and the state treasurer shall add thereto a penalty of ten per cent. thereof, and such tax, with the penalty added thereto, shall bear interest at the rate of twelve per centum per annum until paid, and the state treasurer shall seize personal property belonging to such freight line company found within this state sufficient to pay the amount of such tax, with penalty and interest. The state treasurer, immediately after seizing said property, shall proceed to advertise such property for sale by publishing a notice for at least two times in a newspaper published in Lewis and Clark county, which notice shall describe the property seized, the amount of the tax and penalty for which the property has been seized, and the time, day, and place when and where said property will be sold, and if the said tax and penalty, with the interest due thereon, is not paid before the time appointed for such sale, which shall not be less than ten days after the first publication of such notice, the state treasurer shall proceed to sell such property, or so much thereof as may be necessary, to pay such tax, penalty, interest, and the costs of such seizure and sale, at public auction to the highest bidder.

History: En. Sec. 11, Ch. 5, Ex. L. 1919;
re-en. Sec. 2108, R. C. M. 1921.

Taxation—526, 582, 840.
61 C.J. Taxation §§ 1238 et seq., 1372 et seq., 2128 et seq.

84-4816
(2109 RCM'35)
New Matter
SL '49, C. 137
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84-4816. (2109) Legal proceedings to enforce payment of tax. If the state treasurer is unable to find within this state sufficient personal property belonging to such company charged with such tax to pay such tax, with the penalty and interest thereon, he shall notify the attorney general of the amount of such delinquent tax, with penalty and interest accrued thereon, and it shall be the duty of the attorney general to institute an action in the district court of Lewis and Clark county to collect the same, and upon the institution of any such action an attachment may be issued and any real estate owned by such freight line company may be attached.

History: En. Sec. 12, Ch. 5, Ex. L. 1919;
re-en. Sec. 2109, R. C. M. 1921.

Taxation—585.
61 C.J. Taxation § 1377.

84-4817
(2110 RCM'35)
New Matter
SL '49, C. 137
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84-4817. (2110) Disposition of proceeds of tax. All taxes collected under the provisions of this act shall be credited to the common school income and interest fund.

History: En. Sec. 13, Ch. 5, Ex. L. 1919;
re-en. Sec. 2110, R. C. M. 1921; amd. Sec.
1, Ch. 134, L. 1933.

and interest fund did not remove it from constitutional limitation on levies for state purposes. *State v. North American Car Corp.*, — M —, 164 P 2d 161, 167.

Operation and Effect

The fact that state tax imposed on foreign corporation's freight cars in state went into state common school income

Taxation—906½.
61 C.J. Taxation § 2234 et seq.

INCOME TAX

84-4901

CHAPTER 49

INCOME TAX

- Section 84-4901. Income tax—definitions.
 84-4902. Rate of income tax.
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 84-4926. Deferment of collection of income tax of persons in military service—statute of limitations suspended.
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 84-4935. Exchange of property without gain or loss, effect of.
 84-4936. Income tax statute—reference—definition.
 84-4937. Credit allowed resident and nonresident taxpayers for income taxes imposed by foreign states.

84-4901. (2295.1) Income tax—definitions. For the purpose of this act unless otherwise required by the context:

- (1) The word "board" means the state board of equalization.
- (2) The word "taxpayer" includes any person or fiduciary subject to a tax imposed by this act, and does not include corporations.
- (3) The words "taxable year" mean the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the net income is computed under this act, and include the period for which such return is made if made for a fractional part of such year under the provisions of this act or under regulations prescribed by the board. The words "fiscal year" mean an accounting period of twelve (12) months, ending on the last day of any month other than December thirty-first.

(4) The word "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person whether individual or corporate, acting in any fiduciary capacity for any person, trust or estate.

(5) The word "paid" for the purposes of the deductions and credits under this act means paid or accrued or paid or incurred, and the terms "paid or incurred" and "paid or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act. The term "received" for the purpose of computation of net income under this act, means received or accrued and the term "received or accrued" shall be construed according to the method of accounting upon the basis of which the net income is computed under this act.

(6) The word "resident" applies only to natural persons and includes for the purpose of determining liability to the tax imposed by this act with reference to the income of any taxable year, any person domiciled in the state of Montana, and any other person who maintains a permanent place of abode within the state even though temporarily absent from the state and has not established a residence elsewhere.

(7) The word "dividend" means any distribution made by a corporation out of its earnings or profits to its shareholders or members, whether in cash or in other property or in stock of the corporation, other than stock dividends as herein defined. "Stock dividends" means new stock issued, for surplus or profits capitalized, to shareholders in proportion to their previous holdings.

(8) The words "foreign country" or "foreign government" mean any jurisdiction other than one embraced within the United States. The words "United States" include the states, the territories of Alaska and Hawaii, and the District of Columbia.

(9) The words "information agents" include all individuals, corporations, associations and partnerships, in whatever capacity acting, including lessees, or mortgagors of real or personal property, fiduciaries, employers, and all officers and employees of the state, or of any municipal corporation or political subdivision of the state, having the control, receipt, custody, disposal or payment, of interest, rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits and income with respect to which any person or fiduciary is taxable under this act.

(10) The term "net income" means the gross income of a taxpayer less the deductions allowed by this act.

History: En. Sec. 1, Ch. 181, L. 1933; amd. Sec. 1, Ch. 166, L. 1947.

Cross-Reference

Rural electric cooperatives, exemption, sec. 14-528.

Ad Valorem Tax on Bank Shares Not Repealed

Where recovery of property or ad valorem tax was attempted on the theory that national bank shares had been taxed under the income tax law, and that the legislature had impliedly repealed the ad valorem method of taxing them and substituted

the tax on dividends, held, that no such substitution was made or intended, and ad valorem tax not repealed by income tax on dividends. *Johnson v. Meagher County*, 116 M 565, 568, 155 P 2d 750.

Constitutionality

The income tax law held constitutional. *O'Connell v. State Board of Equalization*, 95 M 91, 25 P 2d 114; *Mills v. State Board of Equalization et al.*, 97 M 13, 33 P 2d 563.

References

Pomeroy v. State Board of Equalization

et al., 99 M 534, 45 P 2d 316; Poorman v. State Board of Equalization, 99 M 543, 45 P 2d 307.

Taxation—104.

61 C.J. Taxation § 2306 et seq.

Meaning of "association" as used in Income Tax Act. 2 ALR 1606.

Inhabitaney or residence within provi-

sion of income tax law as equivalent of domicile. 82 ALR 982.

Power of state to extend its taxing power by its definition of residence or its declared policy of domesticating foreign corporations. 100 ALR 1216.

Meaning of association or joint stock company within statute taxing associations or joint stock companies as corporations. 108 ALR 340.

84-4902. (2295.2) **Rate of income tax.** There shall be levied, collected and paid for each taxable year upon the net income of every individual subject to this tax, after making allowance for exceptions and deductions, as hereinafter provided, a tax at the following rates, to-wit:

(a) On the first two thousand dollars (\$2,000.00) of net income, or any part thereof, at the rate of one per centum (1%);

(b) On the second two thousand dollars (\$2,000.00) of net income, or any part thereof, at the rate of two per centum (2%);

(c) On the third two thousand dollars (\$2,000.00) of net income, or any part thereof, at the rate of three per centum (3%);

(d) On any net income in excess of six thousand dollars (\$6,000.00) at the rate of four per centum (4%).

History: En. Sec. 2, Ch. 181, L. 1933; amd. Sec. 1, Ch. 40, Ex. L. 1933.

NOTE.—Subdivision "e" of this section, as amended by chapter 40, laws of the extraordinary session 1933-34, providing for a surtax, has been omitted as it was held unconstitutional in the case of Mills v. State Board of Equalization et al., 97 M 13, 33 P 2d 563.

Not Retrospective

In the absence of any express provision in ch. 181, L. 1933 (84-4901 et seq.) making the income tax law retrospective, this act may not be given retrospective action to deduct losses sustained on an investment in bonds before the act became operative, under statutory rule of construction set forth in sec. 12-201. State ex rel. Whitlock v. State Board of Equalization, 100 M 72, 84, 45 P 2d 684.

Taxation—104.

61 C.J. Taxation § 2332.

Progressive rates, validity, 27 Am. Jur. 331, Income Taxes, § 36.

Income tax as "property" tax within constitutional limitations on taxation. 11 ALR 313.

Retroactive effect of income tax. 11 ALR 518; 109 ALR 523 and 118 ALR 1153.

Declaratory judgment as to liability to income tax. 19 ALR 1137.

Domicil of taxpayer within state for only part of the taxable year as affecting

computation of income tax. 93 ALR 1199 and 126 ALR 455.

Constitutionality of taxation of grantor on income of revocable trust and trust income distributable to him. 106 ALR 798.

Exemption of charitable organization from income taxes. 108 ALR 302.

Income tax in respect of amounts paid by third persons to trustee in bankruptcy of the taxpayer or garnished by his creditors. 146 ALR 62.

Year as of which amounts received by lessor in advance from lessee are subject to income tax. 146 ALR 995.

Income tax of corporate employee or officer in respect of stock of corporation sold to him at less than its value. 146 ALR 1391.

Trustor as subject to income tax in respect of income of irrevocable trust for charitable purposes. 148 ALR 1236.

Income tax in respect of amount of property returned to donor, or applied for his benefit, by donee, pursuant to terms of gift. 149 ALR 638.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

Computation of losses or profits on sale of securities. 149 ALR 988.

Income tax: year as of which interest should be returned by taxpayer who makes return on accrual basis. 150 ALR 754.

What is an "income tax" within deduction provisions of income tax statute. 151 ALR 983.

84-4903. (2295.3) Tax on nonresident. A like tax is imposed upon every person not resident of this state which tax shall be levied, collected and paid annually, at the rates specified in section 84-4902, with respect to his entire net income as herein defined, except as hereinafter provided, from all property owned and from every business, trade, profession or occupation carried on in this state by such person.

History: En. Sec. 3, Ch. 181, L. 1933.

27 Am. Jur. 414, Income Taxes, §§ 139 et seq.

Income tax on nonresident as double taxation. 15 ALR 1334.

Income tax on nonresidents. 90 ALR 484.

Computation of income tax on nonresident or foreign corporation. 90 ALR 484.

Constitutionality of discrimination between domestic corporations as regards taxation based on fact whether their business is wholly within state, or wholly out of state, or partially within and partially without. 122 ALR 983.

State taxation in respect of business of nonresidents and of foreign corporations carried on both within and without the state. 130 ALR 1188.

84-4904. (2295.4) Tax is personal debt due state. Every tax imposed by this act, and all increases, interest and penalties thereon, shall be from the time it is due and payable, a personal debt from the person or fiduciary liable to pay the same to the state of Montana.

History: En. Sec. 4, Ch. 181, L. 1933.

84-4905. (2295.5) Inventories may be required. Whenever, in the opinion of the board, the use of inventories is necessary in order to determine clearly the income of any taxpayer, inventories shall be taken by such taxpayer upon such basis as the board may prescribe, conforming as nearly as may be to the best accounting practice in the trade or business and most clearly reflecting the income, except that the final closing return of a decedent must be made on an inventory basis regardless of the method previously used in calculating net income. The value of the closing inventory shall be the same as the value fixed for inheritance tax purposes regardless of the method previously used by the taxpayer in valuing his inventories, one (1) of the three (3) alternative methods provided for in section 84-4906 shall be used in changing from the cash to the inventory basis.

History: En. Sec. 5, Ch. 181, L. 1933; amd. Sec. 1, Ch. 167, L. 1947.

Taxation—3631½.

61 C.J. Taxation § 2334 et seq.

27 Am. Jur. 428, Income Taxes, § 216.

84-4906. (2295.6) Computation of net income. (1) The net income shall be computed upon the basis of the taxpayer's annual accounting period (fiscal year or calendar year as the case may be), in accordance with the method of accounting regularly employed in keeping the books of such taxpayer; but if no such method of accounting has been so employed, or the method employed does not clearly reflect the income, the computation shall be made upon such basis and in such manner as in the opinion of the board does clearly reflect the income. If the taxpayer's annual accounting period is other than a fiscal year as defined in this act, or if the taxpayer has no annual accounting period or does not keep books, the net income shall be computed on the basis of the calendar year.

(2) If a taxpayer, with the consent of the board, changes his accounting period from fiscal year to calendar year, from calendar year to fiscal year, or from one fiscal year to another, or changes from one accounting

method to another, the net income shall, be computed on the basis of such new accounting period, or new method of accounting, subject to the provisions of sections 84-4918 and 84-4919.

(3) If the taxpayer, with the consent of the board, changes his method of calculating his taxable income from the cash basis to the inventory basis or if the change is made by the board a full opening and closing inventory shall be required in the year of the change. One (1) of the three (3) alternatives shall be used in computing the tax:

(a) The total opening inventory shall be returned as income in the year of the change.

(b) The total opening inventory shall be offset by the cost of purchases (if they have not been charged to expenses) and the balance of the opening inventory shall be returned as income in the year of change.

(c) The total opening inventory shall be offset by the cost of purchases (if they have not been charged to expenses) and the balance of the opening inventory shall be allocated to the year produced or raised; provided that any portion of the opening inventory which is not allocated to the first two (2) preceding years shall be allocated to the third (3rd) preceding year, and the income so allocated shall be taxed at the rates in effect for the year to which allocated.

(d) Application for change of accounting period or accounting method shall be made to the board within ninety (90) days after the beginning of the taxable year to be covered by the next return.

(e) A taxpayer who regularly sells or otherwise disposes of personal property or makes casual sales of real estate where not more than thirty (30%) per cent is collected in the year of sale on the installment plan, may return as income therefrom in any taxable year, that proportion of the installment payments actually received in that year which the total profit realized, or to be realized, when the payment is completed bear to the total contract price. If the taxpayer disposes of his installment contract or changes from a resident to a nonresident, the installment privilege is revoked and the balance of the profits immediately become taxable, proper adjustments to be made for discounts or premiums involved in the sale of such contracts.

History: En. Sec. 6; Ch. 181, L. 1933; amd. Sec. 2, Ch. 167, L. 1947.

Income tax of corporate employee or officer in respect of stock of corporation sold to him at less than its value. 146 ALR 1391.

Income tax in respect of amount of property returned to donor, or applied for his benefit, by donee, pursuant to terms of gift. 149 ALR 638.

Income tax: year as of which interest should be returned by taxpayer who makes return on accrual basis. 150 ALR 754.

84-4907. (2295.7) Gross income, what included in. The term gross income;

(1) Includes gains, profits and income derived from salaries, wages or compensation for personal service, of whatever kind and in whatever form paid, or from professions, vocations, trades, business, commerce, sales or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, royalties, securities, or the transaction of any business carried on for gain or profit, and income derived from any source whatever. The

84-4907
(2295.7 RCM
(35)
Amended
SL '49, C. 63
Sec. 1, p. 142
(Act does not
Mention This
Section)

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L. '51, c. 17
Sec. 1, p. 21

amount of all such items shall be included in the gross income for the taxable year in which received by the taxpayer; unless, under the methods of accounting permitted in this act, any such amounts are to be properly accounted for as of a different period;

(2) But does not include the following items which are exempt from taxation under this act:

(a) The proceeds of life insurance policies and contracts paid upon the death of the insured to individual beneficiaries or to the estate of the insured.

(b) The amount received by the insured as a return of premium or premiums paid by him under life insurance, endowment or annuity contracts, either during the term or at the maturity of the term mentioned in the contract or upon surrender of the contract.

(c) The value of property acquired by gift, bequest, devise or descent (but the income from such property shall be included in gross income).

(d) Any amount received through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness, or through the war risk insurance act or any law for the benefit or relief of injured or disabled members of the military or naval forces of the United States, and their dependents.

(e) Stock dividends when received by a shareholder shall not be subject to tax, but if before or after the distribution of any such dividend, the corporation proceeds to cancel or redeem its stock at such time and in such manner as to make the distribution and cancellation or redemption in whole or in part essentially equivalent to the distribution of a taxable dividend, the amount so distributed in redemption or cancellation of the stock shall be treated as a taxable dividend and included in gross income; provided, however, that any stock dividend shall be considered in computing gain, profit or income upon the sale, exchange or other disposition of the stock upon which a stock dividend has been declared or of the stock included in such stock dividend.

(3) In the case of taxpayers other than residents, gross income includes only the gross income from sources within this state, but shall not include annuities, interest on bank deposits, interest on bonds, notes or other interest-bearing obligations, or dividends on stock of corporations; except to the extent that such annuities, bank deposits, bonds, notes or other obligations or stocks shall be a part of income from any business, trade, profession or occupation carried on in this state.

History: En. Sec. 7, Ch. 181, L. 1933; amd. Sec. 1, Ch. 28, L. 1937; amd. Sec. 1, Ch. 7, L. 1939.

Employee of Reconstruction Finance Corporation Not Employee of United States

Held, that an employee of the Reconstruction Finance Corporation, which, though an instrumentality of the government, is owned by it in its proprietary rather than in its governmental capacity,

is not an employee of the United States within the meaning of this section, before amendment, in effect exempting salaries of federal officials and employees. *Pomeroy v. State Board of Equalization*, 99 M 534, 538, 45 P 2d 316.

Id. Held, that the word "or" in this section, (before amendment) subdivision (f), declaring that salaries or compensation "received from the United States or officials" and employees thereof shall not be included in the computation of the gross income of

the taxpayer, must be read "of," the word "or" being an apparent typographical error.

References

Towne v. Towne, 117 M 453, 464, 159 P 2d 352.

Taxable income, 27 Am. Jur. 332 et seq., Income Taxes, §§ 39 et seq.

Income tax in respect of salaries of public officers and employees. 11 ALR 532.

Computation of income tax in event of reorganization, merger, or consolidation of corporations. 33 ALR 523.

Gains from unlawful business or transaction as subject of income tax. 43 ALR 799.

Bequest to executor or trustee in lieu of commissions as subject to income tax. 50 ALR 1402.

What gains are to be treated as "dividends" within income tax law. 56 ALR 383.

Income from trust in lieu of dower as subject to income tax. 59 ALR 496.

Distribution by corporation to its stockholders, of stock of other corporation, as taxable income. 61 ALR 360.

Income tax in respect of benefits other than those dependent on death from life insurance policy. 61 ALR 912.

Income tax in case of sale of property acquired by gift. 64 ALR 367.

Income tax in respect of amounts received by stockholder upon liquidation of corporation. 65 ALR 148.

Power to tax profits on sale of securities or other property, the interest or income from which is exempt from income tax. 71 ALR 1268.

Applicability, construction, and effect of provision of income tax act excluding from income subject to tax the value of property acquired by gift, devise, bequest, or descent. 73 ALR 1536 and 119 ALR 415.

Income tax in respect of royalties or other revenue from oil and gas or mineral lands. 74 ALR 183.

Stockholder's gain in event of reorganization, merger or consolidation of corporations as subject to tax. 78 ALR 677.

Assignment of right to future earnings, commissions, or benefits as affecting income tax of assignor. 83 ALR 88 and 131 ALR 661.

State income tax on resident in respect of income earned outside the state. 87 ALR 380.

Liability for income tax in respect of amount of tax paid by another. 91 ALR 1270.

Income tax in respect of compensation for services rendered to governmental or political body under contract by one not an officer or employee. 93 ALR 190.

Lessor as subject to income tax in respect of improvements or additions by lessee. 98 ALR 1207 and 138 ALR 238.

Interest on bonds or other obligations issued by political unit of state as subject of state income tax in absence of express exemption. 98 ALR 1346.

Income tax on difference between cost to donor of securities or other property and value at time of gift. 99 ALR 468.

Income tax in respect of that part of extraordinary cash dividend on stock held by trustee that is allocated to corpus as regards respective rights of life beneficiary and remainderman. 99 ALR 518.

Liability of settlor for income tax in respect of income of trust applied to relieve him of financial obligation or burden. 101 ALR 397 and 109 ALR 1048.

Liability to tax of settlor of trust to provide payments to wife or former wife in lieu of alimony. 101 ALR 401.

Amount received on account of profits made by another or lost to taxpayer because of the other's tort or breach of fiduciary duty as subject to income tax. 101 ALR 1453.

Income tax in respect of exchange of properties. 102 ALR 6.

Validity and construction of state statutes imposing tax on income derived from dividends on stock of foreign corporation. 102 ALR 77.

Accumulation of income by trustee pursuant to terms of trust for past years as income of beneficiary subject to income tax for year in which they were turned over to him. 102 ALR 276.

Income tax in relation to stock dividends (including character of corporate distributions as stock dividends). 105 ALR 761; 130 ALR 408; 143 ALR 230 and 144 ALR 1337.

Income tax in respect of interest accrued on purchase of mortgaged property by mortgagee. 108 ALR 441.

Corporate earnings returned to stockholding customers in proportion to business transacted as taxable income. 109 ALR 969.

Payment to one performing services as compensation subject to income tax or gift exempt therefrom. 110 ALR 285.

Premium or discount at which a corporation issues or sells corporate stock, bonds, or other obligations as income subject to tax. 112 ALR 186.

Construction and applicability of provision of Income Tax Statute regarding exclusion from gross income of proceeds of insurance on life received on death of insured. 119 ALR 1195.

Time when dividends become taxable as income to a taxpayer making his returns on a cash basis. 120 ALR 1280.

Income tax in respect of income received

by former wife after death of husband from trust created by husband in lieu of alimony or wife's marital right to support. 121 ALR 474.

Question whether gift is valid or a mere sham, as regards income tax of donor. 125 ALR 779.

State income tax in respect of income from national bank stock. 127 ALR 941.

Construction and application of statutory provisions taxing legatees, heirs, or trust beneficiaries on income distributable or distributed to them. 141 ALR 1055.

Taxation of beneficiary on income from trust in lieu of alimony. 141 ALR 1090.

Taxation of income distributable or distributed to trust beneficiary as affected

by assignment or disclaimer. 141 ALR 1112.

Collection on debt which had been deducted as a bad debt in return for a previous year. 143 ALR 338.

Provisions of income tax statutes as to inclusion of interest as applicable to interest on tax refunds. 147 ALR 846.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

Income tax: year as of which interest should be returned by taxpayer who makes return on accrual basis. 150 ALR 754.

84-4908. (2295.8) Deductions allowed in computing net income. In computing net income, there shall be allowed as deductions:

(1) All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, or in the production of income required to be included in gross income under this act, including a reasonable allowance for salaries or other compensation for personal services actually rendered, and including rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

(2) All interest paid or accrued during the taxable year on indebtedness.

(3) Taxes, other than taxes imposed by this act, paid or accrued within the taxable year and imposed, first, by the authority of the United States, or of any of its possessions, or second, by the authority of any state, or territory, or any county, school district, municipality, or other taxing subdivision of any state or territory, not including those assessed against local benefits of a kind tending to increase the value of the property assessed, or third, by the authority of any foreign government. The board shall have authority to require the presentation of receipts or other satisfactory evidence that any taxes claimed as a deduction under this subdivision were paid.

(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in trade or business.

(5) Losses sustained during the taxable year and not compensated for by insurance or otherwise, if incurred in any transaction entered into for profit, though not connected with trade or business; but in the case of a taxpayer other than a resident of this state, only as to such transactions in real property or in tangible personal property having an actual situs within this state.

(6) Losses sustained during the taxable year of property not connected with the trade or business (but, in the case of a taxpayer other than a resident, only of real property or tangible personal property having an actual situs within this state) if arising from fires, storms, shipwrecks, or other casualty or from theft, and not compensated for by insurance or otherwise.

84-4908
(2295.8 RCM
'35)
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SL '49, C. 207
Sec. 1, P. 512
Ref. to
SL '49, C. 34
Sec. 1, P. 79

(7) Debts ascertained to be worthless and charged off within the taxable year. In the case of a debt existing on January first, nineteen hundred and thirty-three, no more than its fair market value on that date shall be deducted. A worthless debt arising after January first, nineteen hundred and thirty-three, from unpaid wages, salary, rent, or any similar item with reference to which any person or fiduciary may be taxable, is not an allowable deduction unless the income which such item represents has been included as income by the taxpayer in a return rendered under this act.

(8) A reasonable allowance for the exhaustion, wear and tear of property, the income from which is required to be included in gross income under this act, used in the trade or business, including a reasonable allowance for obsolescence.

(9) In the case of mines, other natural deposits, oil and gas wells and timber, a reasonable allowance for depletion and for depreciation of improvements, according to the peculiar conditions in each case, such reasonable allowance in all cases to be made under rules and regulations to be prescribed by the state board of equalization; provided, however, for the purpose of determining depletion, depreciation and obsolescence in all cases not expressly provided for in this act, the provisions of the most recent act of the congress of the United States, commonly known as the federal income tax act, and the rules, regulations and decisions thereunder, insofar as same are applicable and pertinent and not repugnant to or inconsistent with the express provisions of this act, shall be the rule of decision by the state board of equalization.))

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(10) Contributions or gifts made within the taxable year to or for the use of:

(a) The United States, any state, territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes.

(b) Any corporation, or trust, or community chest fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual; or to the special fund for vocational rehabilitation act.

(c) Posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual; or

(d) Fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to children or animals; to an amount which in all the above cases combined shall not in the aggregate exceed fifteen (15) per centum of the taxpayer's net income as computed without the benefit of this subdivision. Such contributions or gifts shall be allowable as deductions only if verified under rules and regulations prescribed by the board.

(11) In the case of a taxpayer other than a resident of this state the deductions allowed in this section shall be allowed only if, and to the extent

that they are connected with income arising from sources within the state, and with reference to which a nonresident taxpayer is taxable under this act; and the proper apportionment and allocation of the deductions with respect to sources of income within and without this state shall be determined under rules and regulations to be prescribed by the state board of equalization.

History: En. Sec. 8, Ch. 181, L. 1933.

Inheritance Tax Deductible in Computing Income Tax

An inheritance tax is not a tax upon the property of the decedent's estate, but one upon the privilege of acquiring property by inheritance, and the executor of an estate, in computing the income tax of the estate, is entitled to deduct the amount of the inheritance tax paid during the tax year, since inheritance taxes are "taxes" within the meaning of this section. If the legislature had intended not to include them in the deductions it would have done so by clear and unmistakable language. *State ex rel. Davis v. State Board of Equalization*, 104 M 52, 53, 64 P 2d 1057.

Rule of Expressio Unius Not Applicable

The rule *expressio unius est exclusio alterius* not available to taxpayer to deduct, under subd. 5 of this section, losses on securities sustained prior to Jan. 1, 1933, the basic date set by subd. 7 for deduction of worthless debts, there being a special reason for the inclusion of the date in subd. 7. *Expressio unius* rule not to apply if there is some special reason for mentioning one thing and none for mentioning the other. *State ex rel. Whitlock v. State Board of Equalization*, 100 M 72, 85, 45 P 2d 684.

27 Am. Jur. 359 et seq., *Income Taxes*, §§ 93 et seq.

Deduction for "losses." 11 ALR 500.

Deduction of salaries in computing income tax on corporations. 15 ALR 1316.

Death of taxpayer during tax year as affecting method of computing income tax, 31 ALR 930.

Federal taxes as deductible in computing state income tax. 35 ALR 1457.

Deduction for loss or depreciation of good will. 49 ALR 469.

Year in which loss or bad debt must be charged in order to be allowed as a deduction from taxpayer's income. 55 ALR 1280.

Deductibility as business expense of contributions by corporation for benevolent, charitable, or religious purposes. 68 ALR 742.

Deduction of fixed periodical percentage ("straight-line method") as proper method of determining depreciation. 71 ALR 971.

What are charitable, religious, scientific,

literary or educational purposes within provisions of income tax law. 72 ALR 403.

Sum set aside in connection with self-insurance against workmen's compensation liability as deductible in computing income tax. 76 ALR 1067.

Voluntary assumption or payment of obligation as affecting right to deduction therefor. 79 ALR 977.

Interest deductible in computing income tax. 80 ALR 214.

Deductions in respect of leasehold. 82 ALR 332.

Corporation's right to deduction in respect of stock of other corporation or other assets distributed in kind to stockholders. 82 ALR 551.

Expenditures for entertainment of business or professional associates as "ordinary and necessary expenses" which may be deducted under provision of Federal Income Tax statute. 92 ALR 985.

Deductibility of loss incurred as corporate director, officer or stockholder. 99 ALR 566.

Right of one contracting to pay annuity for consideration to deduct annuity payments in making income tax return. 99 ALR 628.

Bank's right to deduct amount which it has been required by banking authorities to write down or charge off in respect of securities held by it. 100 ALR 702.

Deductibility of amount paid or expense incurred by taxpayer on account of his liability for tort, crime, or statutory violation. 104 ALR 680.

Deductibility, in determining individual income tax of trustee or other fiduciary, of amount paid by him, or for which he is responsible, on account of an improper investment. 107 ALR 443.

Deductibility of succession, inheritance, or estate tax in computing state income tax. 108 ALR 1401.

"Obsolescence" for which deduction may be claimed. 120 ALR 446.

Deductibility of loss on insurance policy as result of insurer's insolvency. 120 ALR 967.

Deductibility of penalties or interest paid or incurred by taxpayer on account of delinquent or deferred taxes. 121 ALR 1464.

Deductibility of attorneys' fees or other expenses paid or incurred by taxpayer in preparing tax returns, contesting taxes,

or attempting to obtain tax refund. 122 ALR 218.

Sufficiency of "charge-off" to entitle taxpayer to "bad debt" deduction. 130 ALR 212.

Judgment as to deduction as res judicata as to similar deduction in case involving tax for different years. 130 ALR 393.

Deduction of loss on sale or demolition of residential property. 139 ALR 815.

Deductibility of commissions and other expenditures incident to the purchase or sale of securities. 142 ALR 1149.

Deduction of salaries, commissions, or bonuses to officers or employees in computing income tax. 145 ALR 834.

What is an "income tax" within deduction provisions of income tax statute. 151 ALR 983.

Computation of deduction for depreciation, obsolescence, or depletion after change of basis or method thereof, as affected by amount of actual benefit from deductions for prior years. 152 ALR 876.

Deduction by lessor for depreciation in obsolescence of leased property as affected by lessee's obligation to repair and maintain. 153 ALR 906.

Interest deductible in computing income tax. 154 ALR 934.

Deductibility of expenses of one seeking public office or public or private employment. 155 ALR 128.

When deduction for traveling and living expenses while away from home on business may be claimed. 159 ALR 1217.

Right to deduct from taxable income as business expense share of profits of business which taxpayer has agreed to pay to another for property. 160 ALR 968.

When gain or loss to corporation in dealing in its own stock is taxable or deductible, for income tax purposes. 160 ALR 1085.

Obsolescence for which deduction may be claimed in computing income tax. 160 ALR 1248.

84-4909. (2295.9) Nondeductible items in computing net income. In computing net income no deductions shall in any case be allowed in respect of:

- (1) Personal, living, or family expenses;
- (2) Any amount paid out for new buildings or for permanent improvements or betterments made to increase the value of any property or estate;
- (3) Any amount expended in restoring property or in making good the exhaustion thereof for which an allowance is or has been made; or
- (4) Premiums paid on any life insurance policy covering the life of any officer or employee, or of any person financially interested in any trade or business carried on by the taxpayer, when the taxpayer is directly or indirectly a beneficiary under such policy.

History: En. Sec. 9, Ch. 181, L. 1933.

27 Am. Jur. 359 et seq., Income Taxes, §§ 93 et seq.

84-4910. (2295.10) Exemptions—change of status of taxpayer—death of taxpayer during taxable year. The following exemptions shall be allowed to any taxpayer:

(1) In the case of a single person or of a married person not living with or supporting a husband or wife or family, a personal exemption of one thousand dollars (\$1,000.00).

(2) In the case of the head of a family or a married person living with a husband or wife, a personal exemption of two thousand dollars (\$2,000.00). A husband and wife living together shall receive but one personal exemption, the amount of which shall be two thousand dollars (\$2,000.00). If such husband and wife make separate returns, the personal exemption shall be equally divided between them.

(3) Three hundred dollars (\$300.00) for each person (other than husband and wife) dependent upon and receiving his chief support from the taxpayer, if such dependent person is under eighteen (18) years of age or is incapable of self support because mentally or physically defective.

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(2295.10 RCM
"35")
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SL 49, C. 196
Sec. 1, P. 465

(4) The exemptions allowed by subdivisions one (1) and two (2) of this section shall, in case the status of the taxpayer changes during the taxable year, be the sum of (a) an amount which bears the same ratio to one thousand dollars (\$1,000.00) as the number of months during which the taxpayer was unmarried or a married person not living with husband or wife bears to twelve (12) months, plus (b) an amount which bears the same ratio to two thousand dollars (\$2,000.00) as the number of months during which the taxpayer was a married person living with husband or wife or was the head of a family bears to twelve (12) months. For the purposes of this subdivision a fractional part of a month shall be disregarded unless it amounts to more than half a month, in which case it shall be considered as a month.

(5) If the status of the taxpayer, insofar as it affects the personal exemption or credit for dependents, changes during the taxable year, the personal exemption and credit shall be apportioned in accordance with the number of months before and after such change. For the purpose of such apportionment a fractional part of a month shall be disregarded unless it amounts to more than half a month in which case it shall be considered as a month.

(6) In the case of an individual who dies during the taxable year, the exemptions allowed by subdivisions one (1), two (2) and three (3) of this section shall be determined by his status at the time of his death, and in such case, full exemption shall be allowed to the surviving spouse, if any, according to his or her status at the close of the taxable year.

History: En. Sec. 10, Ch. 181, L. 1933;
amd. Sec. 1, Ch. 29, L. 1941.

84-4911. (2295.11) Income tax involving partnership—partnership statements, when required. Individuals carrying on business in partnership shall be liable for income tax only in their individual capacity. There shall be included, in computing the net income of each partner, his distributive share, whether distributed or not, of the net income of the partnership for the taxable year, or, if his net income for such taxable year is computed upon the basis of a period different from that upon the basis for which the net income of the partnership is computed, then there shall be included his distributive share of the net income of the partnership for any accounting period of the partnership ending within the fiscal or calendar year upon the basis of which the partner's net income is computed. Taxpayers who are members of partnerships may be required by the department to make a return stating the gross receipts and net gains or profits of the partnership for any taxable year. The net income of the partnership shall be computed in the same manner and on the same basis as provided in computing the net income of individuals, except that the deduction provided in subdivision ten (10) of section 84-4908 and the personal exemptions provided for in section 84-4910 shall be allowed only to the individual partners.

History: En. Sec. 11, Ch. 181, L. 1933.

27 Am. Jur. 405, Income Taxes, § 169.

Nature of interest of special partner for purpose of income tax. 45 ALR 1381.

84-4912. (2295.12) Tax on beneficiaries or fiduciaries of estates or trusts.

(1) A tax shall be imposed upon either the fiduciaries or the beneficiaries of estates and trusts as hereinafter provided, except to the extent such estates and trusts shall be held for educational, charitable or religious purposes, which tax shall be levied, collected and paid annually with respect to the income of estates or of any kind of property held in trust, including:

(a) Income received by estates of deceased persons during the period of administration or settlement of the estate;

(b) Income accumulated in trust for the benefit of unborn or unascertained persons, or persons with contingent interests;

(c) Income held for future distribution under the terms of the will or trust;

(d) Income which is to be distributed to the beneficiaries periodically, whether or not at regular intervals, and the income collected by a guardian of an infant to be held or distributed as the court may direct; and

(e) Income of an estate during the period of administration or settlement permitted by subdivision three (3) of this section to be deducted from the net income, the tax with reference to which is to be paid by the fiduciary.

(2) The fiduciary shall be responsible for making the return of income for the estate or trust for which he acts, whether the fiduciary or the beneficiaries be taxable with reference to the income of such estate or trust. The net income of an estate or trust shall be computed in the same manner and on the same basis as provided in this act for individual taxpayers, except that there shall also be allowed as a deduction any part of the gross income which, pursuant to the terms of the will or deed creating the trust, is paid to or held for the United States, or any state, territory or any political subdivision thereof, or the District of Columbia; and in cases under paragraphs (d) and (e) of subdivision one (1) of this section, the fiduciary shall include in the return a statement of each beneficiary's distributive share of such net income, whether or not distributed before the close of the taxable year for which the return is made.

(3) In cases under paragraphs (a), (b) and (c) of subdivision one (1) of this section, the tax shall be imposed upon the fiduciary of the estate or trust with respect to the net income of the estate or trust and shall be paid by the fiduciary, except that in determining the net income of the estate of any deceased person during the period of administration or settlement, there may be deducted the amount of any income properly paid or credited to any legatee, heir or other beneficiary. In such cases, the fiduciary of the estate or trust shall be allowed the same exemptions as are allowed to single persons under section 84-4910, and in such cases the fiduciary of any estate or trust created by a person not a resident, or of an estate of a person not a resident shall be subject to a tax only to the extent to which individuals other than residents are liable under subdivision three (3) of section 84-4907.

(4) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries, and the amount of the income collected

by a guardian of an infant which is to be held or distributed as the court may direct, but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not. Any amount allowed as a deduction under this paragraph shall not be allowed as a deduction under the next paragraph of this section in the same or any succeeding taxable year.

In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is properly paid or credited during such year to any legatee, heir or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir or beneficiary.

If the taxpayer's net income for such taxable year is computed upon the basis of a period different from that upon the basis of which the net income of the estate or trust is computed, then his distributive share of the net income of the estate or trust for any accounting period of such estate or trust ending within the fiscal or calendar year shall be computed upon the basis on which such beneficiary's net income is computed. In such cases a beneficiary not a resident shall be taxable with respect to his income derived through such estate or trust only to the extent provided in subdivision three (3) of section 84-4907, for individuals other than residents.

(5) The fiduciary of a trust created by an employer as a part of a stock bonus, pension or profit-sharing plan for the exclusive benefit of some or all of his employees, to which contributions are made by such employer or employees or both, for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, shall not be taxable under this section, but any amount contributed to such fund by the employer and all earnings of such fund shall be included in computing the income of the distributee in the year in which distributed or made available to him.

(6) Where any part of the income of a trust, other than a testamentary trust, is or may be applied to the payment of premiums upon policies of insurance on the life of the grantor (except policies of insurance irrevocably payable for the purposes and in the manner specified in subdivision ten (10) of section 84-4908, relating to the so-called "charitable contribution" deduction) or to the payment of premiums upon policies of life insurance under which the grantor is the beneficiary, such part of the income of the trust shall be included in computing the net income of the grantor.

History: En. Sec. 12, Ch. 181, L. 1933.

27 Am. Jur. 406 et seq., Income Taxes,
§§ 171 et seq.

References

State ex rel. Davis v. State Board of
Equalization, 104 M 52, 58, 64 P 2d 1057.

84-4913. (2295.13) Information agents' duties. Every information agent shall make return to the department of complete information concerning the

amount of all interest, rent, salaries, wages, premiums, annuities, dividends, compensations, remunerations, emoluments or other fixed or determinable gains, profits and income, except interest coupons payable to bearer, of any person taxable under this act, of seven hundred dollars (\$700) or more in any taxable year under such regulations and in such form and manner and to such extent as may be prescribed by the board.

History: En. Sec. 13, Ch. 181, L. 1933.

84-4914. (2295.14) Persons required to make return—when deductions not allowed nonresident. Every person having a net income for the taxable year of one thousand dollars (\$1000) or over, if single or if married, and not living with or supporting a husband or wife or family, or of two thousand dollars (\$2000) or over if married and living with husband or wife, or if he is the head of a family, or a gross income for the taxable year of twenty-five hundred dollars (\$2500) or over, regardless of the amount of his net income, shall make, under oath, a return stating specifically the items of his gross income and the deductions and credits allowed by this act. If a husband and wife living together have an aggregate net income of two thousand five hundred dollars (\$2500) or over, or an aggregate gross income for such year of three thousand dollars (\$3000) or over, each shall make such a return, or the income of each shall be included in a single joint return, in which case the tax shall be computed on the aggregate income.

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If any such person is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such person. A person other than a resident shall not be entitled to the deductions authorized by section 84-4908, unless he shall make, under oath, a complete return of his gross income both within and without this state.

History: En. Sec. 14, Ch. 181, L. 1933.

27 Am. Jur. 430, Income Taxes, §§ 218 et seq.

84-4915. (2295.15) Effect of changing resident status. If a taxpayer changes his status from that of resident to that of nonresident, or from that of nonresident to that of resident, during the taxable year, he shall file two (2) returns, one as a resident covering the fraction of the year during which he was resident, and one as a person other than a resident covering the fraction of the year during which he was a nonresident. The exemptions provided in section 84-4910 shall be divided ratably between the two (2) returns so filed, according to time. If the aggregate of the taxpayer's net income from all sources during the fraction of the year in which he was a resident, and his net income from sources within this state during the fraction of the year in which he was a nonresident, is less than one thousand dollars (\$1000) in the case of a taxpayer who is single or who is married and not living with or supporting a husband or wife or family, or is less than two thousand dollars (\$2000) in the case of a taxpayer who is married and living with a husband or wife or is the head of a family, no return shall be required under this section.

History: En. Sec. 15, Ch. 181, L. 1933.

84-4916. (2295.16) Partnership return. Every partnership shall make a return for each taxable year, stating specifically the items of its gross income and the deductions allowed by this act, and shall include in the return the names and addresses of the individuals who would be entitled to share in the net income if distributed and the amount of the distributive share of each individual. The return shall be sworn to by any one of the partners.

History: En. Sec. 16, Ch. 181, L. 1933.

27 Am. Jur. 430, Income Taxes, §§ 218 et seq.

84-4917. (2295.17) Return of fiduciary. Every fiduciary (except receivers appointed by authority of law in possession of part only of the property of a taxpayer) shall make under oath a return for the individual or estate or trust from whom he acts, as follows:

(1) If he acts for an individual whose entire income from whatever source derived is in his charge.

(2) If he acts (a) for an estate of a deceased person during the period of administration or settlement, whether or not the income of such estate during such period of administration or settlement is properly paid or credited to any legatee, heir or other beneficiary; (b) for an estate or trust the income of which is accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests; or (c) for an estate or trust the income of which is held for future distribution or is distributable in the discretion of the fiduciary under the terms of the will or trust.

(3) If he acts (a) for an estate or trust the income of which is to be distributed to the beneficiaries periodically; or (b) as the guardian of an infant whose income is to be held or distributed as the court may direct; and if any beneficiary of such estate or trust receives or is entitled to a distributive share of the income of the estate or trust. The return made by a fiduciary shall state specifically the items of the gross income and the deductions, exemptions and credits allowed by this act. Under such regulations as the board may prescribe, a return made by one (1) of two (2) or more joint fiduciaries shall be a sufficient compliance with the above requirement. The fiduciary shall make oath that he has sufficient knowledge of the affairs of the individual, estate or trust for whom or which he acts to enable him to make the return, and that the same is, to the best of his knowledge and belief, true and correct.

Fiduciaries required to make returns under this act shall be subject to all the provisions of this act which apply to taxpayers.

History: En. Sec. 17, Ch. 181, L. 1933.

What constitutes a trust for purpose of income tax assessments. 113 ALR 457.

27 Am. Jur. 430, Income Taxes, §§ 218 et seq.

Trustor as subject to income tax in respect of income of irrevocable trust for charitable purposes. 148 ALR 1236.

84-4918. (2295.18) Change of basis for computing income—rate of tax. If a taxpayer, with the approval of the board, changes the basis of computing net income from fiscal year to calendar year, a separate return shall be made for the period between the close of the last fiscal year for which return was made and the following December thirty-first. If the change is made

from calendar year to fiscal year, a separate return shall be made for the period between the close of the calendar year for which return was made and the date designated as the close of the fiscal year. If the change is made from one fiscal year to another fiscal year, a separate return shall be made for the period between the close of the former fiscal year and the date designated as the close of the new fiscal year. If a taxpayer making his first return of income keeps his accounts on the basis of a fiscal year, he shall make a separate return for the period between the beginning of a calendar year in which such fiscal year ends and the end of such fiscal year.

In all of the above cases the net income shall be computed on the basis of such period for which separate return is made, and the tax shall be paid with reference thereto at the rate for the calendar year in which such period is included; and the exemptions allowed in this act shall be reduced respectively to amounts which bear the same ratio to the full exemption provided for as the number of months in such period bears to twelve (12) months.

History: En. Sec. 18, Ch. 181, L. 1933.

84-4919. (2295.19) Time for filing—affidavit—forms. Returns shall be made to the board on or before the fifteenth day of the fourth month following the close of the fiscal year, or, if the return is made on the basis of the calendar year, then the return shall be made on or before the fifteenth day of April in each year. The board may grant a reasonable extension of time for filing returns whenever in its judgment good cause exists and shall keep a record of every such extension and the reason therefor. Except in the case of persons who are abroad, no such extension shall be granted for more than six (6) months. Such returns shall set forth such facts as the board may deem necessary for the proper enforcement of this act. There shall be annexed to such return the affidavit or affirmation of the persons making the return, to the effect that the statements contained therein are true. Blank forms of return shall be furnished by the board upon application, but failure to secure the form shall not relieve any taxpayer from the obligation of making any return herein required; provided, that every taxpayer liable for a tax under this law shall pay a minimum tax of one dollar (\$1.00). ✓

History: En. Sec. 19, Ch. 181, L. 1933;
amd. Sec. 1, Ch. 105, L. 1935.

84-4920. (2295.20) Revision of return—time for determining tax—examination of records and persons. If, in the opinion of the board, any return of a taxpayer is in any essential respect incorrect, it may revise such return, or if any taxpayer fails to make return as herein required, the board is authorized to make an estimate of the taxable income of such taxpayer from any information in its possession, and to audit and state an account according to such return or the estimate so made by it for the taxes, penalties and interest due the state from such taxpayer. Except in the case of a wilfully false or fraudulent return with intent to evade the tax, the amount of tax due under any return shall be determined by the board within three years after the return was made. In the case of such wilfully false or fraudulent returns, the amount of tax due may be determined at any time

after the return is filed and the tax may be collected at any time after it becomes due, and where no return has been filed, the tax may be assessed at any time.

The board, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of taxable income of any person where information has been obtained, may also examine or cause to have examined, by any agent or representatives designated by it for that purpose, any books, papers or records of memoranda bearing upon the matters required to be included in the return, and may require the attendance of the person rendering the return or any officer or employee of such person, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information, with power to administer oaths to such person or persons.

History: En. Sec. 20, Ch. 181, L. 1933.

84-4921. (2295.21) Oaths may be administered by board members and employees. The board and each assistant, or deputy, may administer an oath to any person, or take the acknowledgment of any person in respect to any report or return required by or pursuant to this act, or by the rules and regulations of the board.

History: En. Sec. 21, Ch. 181, L. 1933.

84-4922. (2295.22) Revision—application—hearing—adjustment. If an application for revision be filed with the board by a taxpayer within two years from the time of the filing of the return or if the tax of such taxpayer has been recomputed, then from the time of such recomputation, the board shall grant a hearing thereon, and if it is made to appear upon any such hearing by evidence submitted to it or otherwise, that any such computation includes taxes or other charges which could not have been lawfully demanded, or that payment has been illegally made or exacted of any such amount so computed, the board shall resettle the same according to law and the facts, and adjust the computation of taxes accordingly, and shall send notice of its determination thereon to the taxpayer.

History: En. Sec. 22, Ch. 181, L. 1933.

84-4923. (2295.23) Review of board's findings on application for revision—appeal to supreme court. The determination of the board upon any application made to it by any taxpayer for revision and resettlement of any computation of tax as described by this act, may be reviewed, both upon the law and the facts upon certiorari by the district court of the county wherein the taxpayer is resident, or in the case of nonresidents, by the district court of Lewis and Clark county, at the instance of any person or association affected thereby, and in the name and on behalf of the people of the state. For the purpose of such review the board shall return on such certiorari, the accounts and all the evidence before it on such application, and all the papers and proofs upon the original statement of such account and all proceedings thereon. If the original or resettled accounts are found erroneous or illegal either in point of law or fact, by the court, upon any such review, the accounts reviewed shall then be corrected and restated, and from any determination of such court upon any such review, an

appeal to the supreme court may be taken by either party. No certiorari to review any statement of a computation or any determination by the board under this act shall be granted unless notice of application therefor is made within thirty (30) days after the service of the notice of such determination. Eight days' notice shall be given to the department of the application for such writ. Before making the application, an undertaking must be filed with it in such amount and with such sureties as a judge of the court shall approve, to the effect, that if such writ is dismissed or the determination of the board affirmed, the applicant for the writ will pay all costs and charges which may accrue against him in the prosecution of the writ, including costs of all appeals.

History: En. Sec. 23, Ch. 181, L. 1933.

Court without Authority to Return Tax Paid Under Protest

Under this section the court is without power to render a judgment for the return

of the tax paid under protest. State ex rel. Davis v. State Board of Equalization, 104 M 52, 62, 64 P 2d 1057.

Taxation 496(1-14).
61 C.J. Taxation § 2336.

84-4924. (2295.24) Penalties for violations of act. (1) If any person, without intent to evade any tax imposed by this act, fails to make a return of income or pay any tax if one is due at the time required by or under the provisions of this act, but voluntarily makes a correct return of income and pays the tax due within sixty (60) days thereafter, there shall be added to the tax an additional amount equal to five (5) per centum thereof, but such additional amount shall in no case be less than two dollars (\$2.00), and an additional one (1) per centum for each month or fraction of a month during which the tax remains unpaid.

(2) If any person fails voluntarily to make a return of income or to pay a tax if one is due within sixty (60) days of the time required by or under the provisions of this act, the tax shall be doubled and such doubled tax shall be increased by one (1) per centum for each month or fraction of a month from the time the tax was originally due to the date of payment.

(3) Any individual, corporation or partnership, who, without fraudulent intent, fails to pay any tax, or to make, render, sign or verify any return, or to supply any information within the time required by or under the provisions of this act, shall be guilty of a misdemeanor and, upon conviction, be fined not to exceed three hundred dollars (\$300).

(4) Any individual, corporation or partnership, or any officer or employee of any corporation, or member or employee of any partnership, who, with intent to evade any tax or any requirement of this act or any lawful requirement of the board thereunder, fails to pay the tax, or to make, render, sign or verify any return, or to supply any information, within the time required by or under the provisions of this act, or who, with like intent, makes, renders, signs, or verifies any false or fraudulent return or statement, or supplies any false or fraudulent information, shall be liable to a penalty of not more than one thousand dollars (\$1000), to be recovered by the attorney general, in the name of the state, by action in any court of competent jurisdiction, and shall also be guilty of a misdemeanor and shall, upon conviction, be fined not to exceed one thousand dollars (\$1000) or be imprisoned in the county jail not to exceed one (1) year, or both, at the discretion of the court.

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Ref. to
L. '51, c. 78
Sec. 1, p. 135

(5) The certificate of the department to the effect that a tax has not been paid, that a return has not been filed, or that information has not been supplied, as required by or under the provisions of this act, shall be prima facie evidence that such tax has not been paid, that such return has not been filed, or that such information has not been supplied.

History: En. Sec. 24, Ch. 181, L. 1933.

Taxation 835 et seq.

61 C.J. Taxation § 2104 et seq.

27 Am. Jur. 452 et seq., Income Taxes,

§§ 250 et seq.

When running of limitations against criminal prosecutions for violation of Income Tax Act begins. 76 ALR 1549.

Constitutionality, construction, and effect of specific provisions of state corporate income tax law to prevent tax evasion. 92 ALR 1073.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

84-4925. (2295.25) Payment of tax—penalty and interest—refund of excess payment. (1) Each taxpayer shall, or in cases where an agent or a guardian or other fiduciary makes return for the taxpayer on whose behalf he is acting, then the agent, guardian, or other fiduciary shall, at the time of filing his return, pay to the board the amount of tax payable hereunder as the same shall appear from the face of the return.

The tax may, at the option of the taxpayer, be paid in two installments, as nearly equal as may be, instead of a single payment, in which case the first installment shall be paid in or before the date prescribed for the payment of the tax as a single payment, the second installment on or before the fifteenth day of the sixth month after such date.

If each installment is paid in full on or before the date when it is due, there shall be no interest thereon. If any installment is not paid in full on or before the date fixed for its payment, either by this act or by the board in accordance with the terms of an extension, the whole amount of the tax remaining unpaid shall be due and payable upon notice and demand from the board, and shall be subject to interest, penalties and additional taxes as provided in section 84-4924.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of six (6) per centum per annum from the time when the return was originally required to be filed to the time of payment.

(2) As soon as practicable after the return is filed, the department shall examine it and compute the tax.

(3) If the amount of tax as computed is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the board within ten (10) days after notice of the amount of the tax as computed is mailed by the board. In such case, if the return is made in good faith and the understatement of the amount in return is not due to any fault of the taxpayer, there shall be no interest, penalty or additional tax because of such understatement. Provided, the deficiency is paid within ten (10) days after notice of the amount is mailed to the taxpayer. If payment is not made within ten (10) days, there shall be added to the amount of deficiency five (5) per centum thereof, and, in addition, interest at the rate of one (1) per centum per month for each month or fraction of a month calculated from the date of the notice. If the understatement is due to negligence

on the part of the taxpayer but without intent to defraud, there shall be added to the amount of the deficiency five (5) per centum thereof, and in addition, interest at the rate of one (1) per centum per month for each month or fraction of a month. If the understatement is false or fraudulent with intent to evade the tax, the tax, with reference to the additional income discovered shall be doubled and an additional one (1) per centum shall be added to the amount so due for each month or fraction of a month. Except as otherwise provided in this subdivision, the interest provided for in this subdivision shall in all cases be computed from the date the tax was originally due to the date of payment.

(4) If the amount of the tax as computed is less than the amount theretofore paid, the taxpayer is entitled to a refund of the excess.

History: En. Sec. 25, Ch. 181, L. 1933.

Taxation 517, 526, 527, 528, 537, 840.
61 C.J. Taxation, §§ 1226, 2338 et seq.

84-4926. Deferment of collection of income tax of persons in military service—statute of limitations suspended. The collection from any person in the military service, as defined by the soldiers' and sailors' civil relief act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state of Montana on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than six (6) months after the termination of his period of military service, if such person's ability to pay such tax is materially impaired by reason of such service. No interest on any amount of tax, collection of which is deferred for any period under this act, and no penalty for nonpayment of such amount during such period, shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual, the collection of such tax is deferred under this section, and for an additional period of one (1) year, beginning with the day following the period of military service.

History: En. Sec. 1, Ch. 181, L. 1943.

84-4927. District court may grant stay of enforcement—no fines and penalties accrue during stay. Any such person may, during his period of military service, or within six (6) months thereafter, apply to a court for relief in respect of any tax obligation or any tax liability incurred by such person prior to his period of military service, or in respect of any such obligation or liability, whether falling due prior to or during his period of military service. Any district court of the state of Montana, after appropriate notice and hearing, unless in its opinion the ability of the applicant to comply with the terms of such obligation or liability, or to pay such tax or assessment has not been materially affected by reason of his military service, may grant a stay of the enforcement thereof during the applicant's period of military service and, from the date of termination of such period of military service or from the date of application, if made after such service, for a period of time equal to the period of military service of the applicant, or any part of such period, subject to payment of the balance of principal and accumulated interest due and unpaid, at the date of termination of such

period of military service or from the date of application as the case may be, in equal periodic installments during such extended period at such rate of interest as may be prescribed for such tax obligation or tax liability or assessment, if paid when due, and subject to such other terms as may be just.

When any court has granted a stay, as provided in this section, no fine or penalty shall accrue during the period the terms and conditions of such stay are complied with by reason of the failure to comply with the terms or conditions of the tax obligation, tax liability or assessment in respect of which such stay was granted.

History: En. Sec. 2, Ch. 181, L. 1943.

84-4928. (2295.26) Levy upon and sale of property for payment of income taxes. If any tax imposed by this act or any portion of such tax is not paid within sixty (60) days after the same becomes due, the board shall issue a warrant under its official seal directed to the sheriff of any county of the state commanding him to levy upon and sell the real and personal property of the person owing the same, found within his county, for the payment of the amount thereof, with the added penalties, interest and the cost of executing the warrant, and to return such warrant to the board and pay to it the money collected by virtue thereof by a time to be therein specified, not more than sixty (60) days from the date of the warrant. The sheriff shall within five (5) days after the receipt of the warrant, file with the clerk of the district court of his county a copy thereof, and thereupon the clerk shall enter in the judgment docket, in the column for judgment debtors, the name of the taxpayer mentioned in the warrant, and in appropriate columns, the amount of the tax or portion thereof and penalties for which the warrant is issued and the date when such copy is filed, and thereupon the amount of such warrant so docketed shall become a lien upon the title to and interest in real property or chattels real of the person against whom it is levied in the same manner as a judgment docketed in the office of such clerk. The said sheriff shall thereupon proceed upon the same in all respects, with like effect, and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. In the discretion of the board a warrant of like terms, force and effect may be issued and directed to any agent authorized to collect income taxes, and in the execution thereof, such agent shall have the powers conferred by law upon sheriffs, but shall be entitled to no fee or compensation in excess of actual expenses paid in the performance of such duty. If a warrant be returned not satisfied in full, the board shall have the same remedies to enforce the claim for taxes against the taxpayer as if the people of the state had recovered judgment against the taxpayer for the amount of the tax.

History: En. Sec. 26, Ch. 181, L. 1933;
amd. Sec. 1, Ch. 172, L. 1947.

84-4929. (2295.27) Action by attorney general. Action may be brought at any time by the attorney general of the state at the instance of the board, in the name of the state to recover the amount of any taxes, penalties and interest due under this act.

History: En. Sec. 27, Ch. 181, L. 1933.

Taxation 585.

61 C.J. Taxation § 1377.

84-4930. (2295.29) Board authorized to make rules and regulations.

The board is hereby authorized to make such rules and regulations and to require such facts and information to be reported as it may deem necessary to enforce the provisions of this act.

History: En. Sec. 29, Ch. 181, L. 1933.

84-4931. (2295.30) Divulging information unlawful—exceptions—penalty.

(1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the board or any deputy, assistant, agent, clerk, or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding under the provisions of this act to which the board is a party, or on behalf of any party to any action or proceedings under the provisions of this act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the board orders them to be destroyed.

(2) Any offense against subdivision one (1) of this section shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

(3) Notwithstanding the provisions of this section, the board may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of

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L. '51, c. 110
Sec. 1, p. 188

the income or return of income of any individual; but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

History: En. Sec. 30, Ch. 181, L. 1933.

Constitutionality, construction, and application of statutory provisions regarding publicity or confidential and privileged character of income tax information or returns, 151 ALR 1049.

Publicity of returns, 27 Am. Jur. 430, Income Taxes, § 220.

84-4932. (2295.31) Construction of net income. For the purpose of raising revenue the net income required to be shown on returns under this act and taken as the basis for determining the tax hereunder shall not be classified or held or construed to be property. And all income, except what has been expressly exempted under the provisions of this act and income not permitted to be taxed under the constitution of this state or the constitution or laws of the United States, shall be included and considered in determining the net income of taxpayers within the provision of this act.

History: En. Sec. 31, Ch. 181, L. 1933.

References

Johnson v. Meagher County et al., 116 M 565, 568, 155 P 2d 750.

84-4933. (2295.32) Method of figuring gain or loss. 1. For the purpose of ascertaining the gain derived or loss sustained from the sale or other disposition of property, real, personal or mixed, the basis shall be, in case of property acquired on or after January first, nineteen hundred thirty-three, the cost thereof, or the inventory value if the inventory is made in accordance with this act.

2. In case of property acquired prior to January first, nineteen hundred thirty-three, and disposed of thereafter,

(a) No profit shall be deemed to have been derived if either the cost or the fair market price or value on January first, nineteen hundred thirty-three, exceeds the value realized.

(b) No loss shall be deemed to have been sustained if either the cost or the fair market price or value on January first, nineteen hundred thirty-three, is less than the value realized.

(c) Where both the cost and the fair market price or value on January first, nineteen hundred thirty-three, are less than the value realized, the basis for computing profit shall be the cost or the fair market price or value on January first, nineteen hundred thirty-three, whichever is higher.

(d) Where both the cost and the fair market price or value on January first, nineteen hundred thirty-three, are in excess of the value realized, the basis for computing loss shall be the cost or the fair market price or value on January first, nineteen hundred thirty-three, whichever is lower.

3. In the case of property acquired by gift after December thirty-first, nineteen hundred thirty-two, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift. If the facts necessary to determine such basis are unknown to the donee, the state board of equalization shall, if possible, obtain

such facts from such donor or last preceding owner, or any other person cognizant thereof. If the state board of equalization finds it impossible to obtain such facts, gain or loss shall be determined as provided in subdivision one or two of this section, except that the word "cost" as used in said subdivisions shall be deemed to mean the fair market price or value of such property as found by the state board of equalization as of the date or approximate date at which, according to the best information that the state board of equalization is able to obtain, such property was acquired by such donor or last preceding owner.

4. In the case of property acquired by gift or transfer in trust on or before December thirty-first, nineteen hundred thirty-two, gain or loss shall be determined as provided in subdivision one or two of this section, except that the word "cost" as used in said subdivisions shall be deemed to mean the fair market price or value of such property at the time of such acquisition. The provisions of this subdivision shall apply to the acquisition of property interests through the exercise of a power of appointment regardless of the time of acquisition.

5. If personal property was acquired by specific bequest, or if real property was acquired by general or specific devise or by intestacy, gain or loss shall be determined as provided in subdivision one or two of this section, except that the word "cost" as used in said subdivisions shall be deemed to mean the fair market price or value of such property at the time of the death of the decedent. If the property was acquired by the decedent's estate from the decedent, gain or loss in the hands of the estate shall be determined as provided in subdivisions one or two of this section, except that the word "cost" as used in said subdivisions shall be deemed to mean the fair market price or value of such property at the time of the death of the decedent. In all other cases if the property was acquired either by will or by intestacy, gain or loss shall be determined as provided in subdivision one or two of this section, except that the word "cost" as used in said subdivisions shall be deemed to mean the fair market price or value of such property at the time of the distribution to the taxpayer. In the case of property transferred in trust to pay the income for life to or upon the order or direction of the grantor, with the right reserved to the grantor at all times prior to his death to revoke the trust, gain or loss in the hands of the persons entitled under the terms of the trust instrument to the property after the grantor's death shall, after such death, be ascertained in the same manner as if the trust instrument had been a will executed on the day of the grantor's death. In case such property has been appraised for inheritance tax purposes by the state of domicile of the transferor, or for the purpose of the United States estate tax, the appraised value shall be presumed to be the fair market price or value at the date as of which the appraisal was made, but if appraised as of the same date for more than one of such purposes, the appraisal for the purpose first specified shall be presumed to be the fair market price or value; provided, however, that nothing herein shall be construed as meaning that the basic date for the purpose of computing gains or losses on the part of the taxpayer under section 84-4901 to section 84-4932, inclusive, was other than January 1, 1933.

History: En. Sec. 1, Ch. 148, L. 1935.

27 Am. Jur. 387, Income Taxes, § 141.
Accretions of value determined by sale as income. 15 ALR 1311.

Income tax on profit from executor's or administrator's sale of property at advance over cost to decedent. 33 ALR 813.

Computation of profits or losses on sale of securities. 68 ALR 827.

Computation of gain or loss from sale of stock rights. 70 ALR 1305.

Time as of which value of property taken by remainderman is to be determined in ascertaining profit or loss from its sale for income tax purposes. 96 ALR 1362.

Base date for computing income tax in respect of gain or loss on disposition of property acquired by bequest, devise, or inheritance, or by decedent's estate from decedent. 101 ALR 311.

Method or formula for determination of value of corporate stock, sufficient basis in

transactions of purchase and sale. 103 ALR 955.

Computation of gain or loss on disposition of corporate stock received as dividends or stock in respect of which stock dividend was received. 105 ALR 780.

Right to use inventories, for income tax purposes, in respect of transactions in securities. 118 ALR 462.

Computation of losses or profits on sale of securities. 149 ALR 988.

Method of computing income tax, or failure to report taxable income, in earlier year as precluding or estopping taxpayer in computation of tax for later year. 149 ALR 1150.

Price paid or received by taxpayer for property as evidence of its value for tax purposes. 160 ALR 684.

When gain or loss to corporation in dealing in its own stock is taxable or deductible, for income tax purposes. 160 ALR 1085.

84-4934. (2295.33) Entire gain or loss to be recognized. Upon the sale or exchange of property the entire amount of the gain or loss, determined under 84-4933, shall be recognized, except as hereinafter provided in this section.

(1) No gain or loss shall be recognized if property held for productive use in trade or business or for investment (not including stock in trade or other property held primarily for sale, nor stocks, bonds, notes, choses in action, certificates of trust or beneficial interest, or other securities or evidences of indebtedness or interest) is exchanged solely for property of a like kind to be held either for productive use in trade or business or for investment, or if common stock in a corporation, is exchanged solely for common stock in the same corporation, or if preferred stock in a corporation is exchanged solely for preferred stock in the same corporation.

(2) No gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization.

(3) No gain or loss shall be recognized if property is transferred to a corporation by one or more persons solely in exchange for stock or securities in such corporation, and immediately after the exchange such person or persons are in control of the corporation; but if the property thus transferred (other than stock in trade) is sold or otherwise disposed of by the corporation within the six months subsequent to such transfer, gain or loss to such person or persons shall be recognized as of the date of the exchange, the stock or securities received by such person or persons from the corporation being presumed in the absence of proof to the contrary in such case to be of the same value as the amount of the consideration received by the corporation on the subsequent sale or other disposition of such property; and it is further provided that in the case of an exchange by two or more persons this subdivision shall apply only if the amount of

the stock and securities received by each is substantially in proportion to his interest in the property prior to the exchange.

(4) If property (as a result of its destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation, or the threat or imminence thereof) is compulsorily or involuntarily converted into property similar or related in service or use to the property so converted, or into money which is forthwith in good faith, under regulations prescribed by the board of equalization expended in the acquisition of other property similar or related in service or use to the property so converted, or in the acquisition of control of a corporation owning such other property, or in the establishment of a replacement fund, no gain or loss shall be recognized. If any part of the money is not so expended, the gain, if any, shall be so recognized, but in an amount **not** in excess of the money which is not so expended.

(5) If there is distributed, in pursuance of a plan of reorganization, to a shareholder in a corporation a party to the reorganization, stock or securities in such corporation or in another corporation a party to the reorganization, without the surrender by such shareholder of stock or securities in such a corporation, no gain to the distributee from the receipt of such stock or securities shall be recognized.

(6) If an exchange would be within the provisions of subdivision (1), (2), or (3) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain, but also of other property or money, then the gain, if any, to the recipient shall be recognized, but in an amount not in excess of the sum of such money and the fair market value of such other property.

(7) If an exchange would be within the provisions of subdivision (1), (2), or (3) of this section if it were not for the fact that the property received in exchange consists not only of property permitted by such subdivision to be received without the recognition of gain or loss, but also of other property or money, then no loss from the exchange shall be recognized.

(8) As used in this section:

The term "reorganization" means (A) a merger or consolidation (including the acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation or substantially all the properties of another corporation), or (B) a transfer by a corporation of all or a part of its assets to another corporation if immediately after the transfer the transferor or its stockholders or both are in control of the corporation to which the assets are transferred, or (C) a recapitalization, or (D) a mere change in identity, form, or place of organization, however effected.

The term "a party to a reorganization" includes a corporation resulting from a reorganization and includes both corporations in the case of an acquisition by one corporation of at least a majority of the voting stock and at least a majority of the total number of shares of all other classes of stock of another corporation.

As used in this section the term "control" means the ownership of at least eighty per centum of the voting stock and at least eighty per centum of the total number of shares of all other classes of stock of the corporation; provided, however, that nothing herein shall be construed as meaning that the basic date for the purpose of computing gains or losses on the part of the taxpayer under section 84-4901 to section 84-4932, inclusive, was other than January 1, 1933.

History: En. Sec. 1, Ch. 148, L. 1935.

84-4935. (2295.34) Exchange of property without gain or loss, effect of. When property is exchanged for other property and no gain or loss is realized under the provisions of section 84-4934, the property received shall be treated as taking the place of the property exchanged therefor.

History: En. Sec. 1, Ch. 148, L. 1935.

84-4936. Income tax statute — reference — definition. Whenever the phrase "this act" appears herein, it refers to Chapter 49 of this Title, relating to personal income taxes and all acts amendatory thereof and supplementary thereto.

History: En. Sec. 1, Ch. 28, L. 1941.

84-4937. Credit allowed resident and nonresident taxpayers for income taxes imposed by foreign states. (a) Resident taxpayers. Subject to the following conditions, residents of this state shall be allowed a credit against the taxes imposed by this act for net income taxes imposed by and paid to another state or country on income taxable under this act:

(1) The credit shall be allowed only for taxes paid to such other state or country on income derived from sources within such state or country which is taxable under the laws of such state or country irrespective of the residence or domicile of the recipient;

(2) The credit shall not be allowed if such other state or country allows residents of this state a credit against the taxes imposed by such state or country for taxes paid or payable under this act;

(3) The credit shall not exceed such proportion of the tax payable under this act as the income subject to tax in such other state or country and also taxable under this act bears to the taxpayer's entire income upon which the tax is imposed by this act.

(b) Nonresident taxpayers. Subject to the following conditions, non-residents of this state, shall be allowed a credit against the taxes imposed by this act for net income taxes imposed by and paid to the state or country of residence on income taxable under this act:

(1) The credit shall be allowed only if the state or country of residence either does not tax income of residents of this state derived from sources within such state or country or allows residents of this state a credit against the taxes imposed by such state or country on such income for taxes paid or payable thereon under this act;

(2) The credit shall not be allowed for taxes paid to a state or country which allows its residents a credit against the taxes imposed by such state or country for income taxes paid or payable under this act, irrespective of whether its residents are allowed a credit against the taxes imposed by this act for income taxes paid to such state or country;

(3) Credit shall be allowed only for such proportion of the taxes paid to the state or country of residence as the income taxable under this act and also subject to tax in the state or country of residence bears to the entire income upon which the taxes paid to the state or country of residence are imposed;

(4) The credit shall not exceed such proportion of the tax payable under this act as the income subject to tax in the state or country of residence and also taxable under this act bears to the entire income taxable under this act.

(c) Estates or trusts. For the purposes of this section an estate or trust shall be considered a resident of the state or country which taxes the income of the trust or estate irrespective of whether the income is derived from sources within such state or country. If an estate or trust is a resident of this state and also a resident of another state or country, it shall, notwithstanding the limitations contained in subsections (a) and (b) of this section be allowed a credit, subject to the following conditions, against the taxes imposed by this act for net income taxes imposed by and paid to such other state or country:

(1) Credit shall be allowed only for such proportion of the taxes paid to such other state or country as the income taxable under this act and also subject to tax in such other state or country bears to the entire income upon which the taxes paid to such other state or country are imposed;

(2) The credit shall not exceed such proportion of the tax payable under this act as the income subject to tax in such other state or country and also taxable under this act bears to the entire income taxable under the act.

(d) Resident beneficiary. A resident beneficiary of an estate or trust who is taxable on the income of the estate or trust pursuant to the provisions of subsection (c) of section 84-4912 shall, subject to the following conditions, be allowed a credit against the taxes imposed by this act on such income for net income taxes paid by the estate or trust to another state or country on such income:

(1) Credit shall be allowed only for such proportion of the tax paid to such other state or country by the estate or trust as the income of the estate or trust which is taxable to the beneficiary under this act and also taxed to the estate or trust in such other state or country bears to the entire income of the estate or trust upon which the taxes paid to such other state or country were imposed;

(2) The credit shall not exceed such proportion of the tax payable under this act as the income of the estate or trust which is taxable to the beneficiary under this act and also taxed to the estate or trust in such other state or country bears to the beneficiary's entire income upon which the tax is imposed by this act.

(e) Taxes credited or refunded. If any taxes paid to another state or country for which a taxpayer has been allowed a credit under this act are at any time credited or refunded to the taxpayer, such fact shall immediately be reported by the taxpayer to the commissioner. A tax equal to the credit ALLOWED for such taxes so credited or refunded shall be due and payable from the taxpayer upon notice and demand from the commissioner. Interest shall be added to and collected as a part of such tax at the rate of six

per cent per annum from the date the credit was allowed under this act to the date of the notice and demand. If such tax and the interest thereon is not paid within ten days from the date of notice and demand, there shall be collected as a part of the tax interest upon the unpaid amount at the rate of six per cent per annum from the date of such notice and demand until it is paid.

The taxes credited against the taxes imposed by this act on any taxpayer or any class or classes of taxpayers for net income taxes paid to another state or country shall not be allowed if the allowance of such credit will result in an invalid or illegal discrimination against another taxpayer or another class or classes of taxpayers.

History: En. Sec. 2, Ch. 28, L. 1941.

apparently inadvertently used instead of the words "state board of equalization."

NOTE.—The word "commissioner" appearing in the above subsection (e) was

CHAPTER 50

INHERITANCE TAX

See Wills, Succession, Probate and Guardianship, Sections 91-4401 to 91-4459.

CHAPTER 51

INSURANCE COMPANIES GENERAL PROPERTY TAX

Section 84-5101. Assessment and taxation of insurance companies.

84-5102. Method of computing taxable property.

84-5103. Taxation of credits of insurance companies—other property.

84-5101. (2111) Assessment and taxation of insurance companies. Every insurance company organized under the laws of the state of Montana shall be assessed and taxed upon its real estate and personal property at the same rate and in the same manner as other property is assessed and taxed in this state.

History: En. Sec. 1, Ch. 64, L. 1915;
re-en. Sec. 2111, R. C. M. 1921.

Permissible classification of foreign company which will justify discrimination in taxes among them. 83 ALR 468.

Taxation—137.

61 C.J. Taxation § 296 et seq.

51 Am. Jur. 809, Taxation, § 915 et seq.

Taxation of insurance reserves. 13 ALR 186.

Discrimination by state against foreign insurance corporations in imposition of taxes and license fees. 49 ALR 740.

Consideration paid for annuity obligation as "premium" within contemplation of tax statutes. 109 ALR 1060.

What organizations are within provisions of tax statutes relating to insurance companies. 146 ALR 454.

84-5102. (2112) Method of computing taxable property. In computing the taxable property of insurance companies organized under the laws of this state, there shall be deducted therefrom the value of the real property on which the company pays taxes, such real estate being assessed to the company as other real estate; also the legal reserve required by the laws of this state, or by the insurance department thereof, for the protection of policy holders; also all assets not admitted as such by the state, or by the insurance department thereof; also such debts and liabilities as may be due or owing by such company.

History: En. Sec. 2, Ch. 64, L. 1915;
re-en. Sec. 2112, R. C. M. 1921.

Taxation—387.
61 C.J. Taxation § 849 et seq.

84-5103. (2112.1) Taxation of credits of insurance companies—other property. All property other than credits of insurance companies required by law to have and maintain a legal reserve for the protection of policy holders shall be assessed, classified and taxed as other property of like character. Credits, including evidence of indebtedness secured by mortgages, less legal reserves for the protection of policy holders and other indebtedness shall be classified and taxed on the basis of thirty per centum (30%) of full cash value as thus ascertained.

History: En. Sec. 1, Ch. 63, L. 1929.

Operation and Effect

Where there was no evidence in an action by a national bank to recover taxes paid under protest that money owned by insurance companies came in competition with plaintiff's business, its contention

that it was being discriminated against by this section, relating to the taxation of moneyed capital of such companies, in violation of section 5219, U. S. Revised Statutes was not sustained. Merchants Nat. Bk. v. Dawson County, 93 M 310, 19 P 2d 892.

CHAPTER 52

LIVESTOCK TAXATION

- Section** 84-5201. Livestock, where assessed.
84-5202. Assessment of migratory livestock.
84-5203. Duty of owner when livestock is removed from home county to another county.
84-5204. Apportionment of taxes upon migratory livestock.
84-5205. Collection and disposition of proceeds of taxes.
84-5206. Distribution of migratory stock fund.
84-5207. Removal of livestock after assessment.
84-5208. Penalty for violation of law.
84-5209. Additional tax levy to pay expense of enforcing stock laws.
84-5210. State board of equalization to prescribe levy.
84-5211. Limitation of levies—livestock funds.
84-5212. Use of fund arising from taxes prescribed in preceding section.
84-5213. Transmission of taxes from county to state treasurer.
84-5214. Levy for bounty funds—use of proceeds.
84-5215. Bounties, when paid.
84-5216. Tax levy for bounties on predatory animals.
84-5217. Signers of petition—time for presenting—limitation on bounties—bounty inspectors.
84-5218. County bounty fund.
84-5219. Presentation of skins—affidavit.
84-5220. County clerk to provide forms.
84-5221. Existing bounty laws not affected.

84-5201. (2068) Livestock, where assessed. Livestock belonging to a permanent resident of the state must not be listed or assessed while such stock is in transit, nor until it arrives in the county where the person owning the same resides, and must be listed and assessed in such county. If such livestock runs at large in a county other than the one in which such owner resides, it must be listed and assessed in such county.

History: En. Sec. 3720, Pol. C. 1895;
re-en. Sec. 2530, Rev. C. 1907; re-en. Sec.
2068, R. C. M. 1921.

Cross-Reference

Horses on open range, assessment by
county assessor, sec. 46-1809.

References

Cited or applied as section 3720, political code, in Flowerree Cattle Co. v. Lewis and Clark County, 33 M 32, 35, 81 P 398; Coburn Cattle Co. v. Small, 35 M 288, 294, 88 P 953.

84-5202
Ref. to
L. '51, c. 85
Sec. 7, p. 148

84-5202. (2069) Assessment of migratory livestock. All livestock pastured, ranged or grazed, or which does pasture, range or graze in any county or counties of the state during any year, other than the county wherein the said livestock is usually kept by the owner thereof on lands claimed by him, to be known as the home county, shall be assessed for taxation, and such tax collected in the county in which it is found at the time fixed by law for the assessment of all property in the state, at the rate of levy of the home county, and it shall be the duty of the owner thereof, or his agent, at the time of the assessment of such livestock, to make and deliver to the assessor of the county where such livestock is found, and to the assessor of the home county, a written statement, under oath, showing the different kinds of such livestock within such county belonging to him or under his charge, with their marks and brands, and showing the full time during the current year that such livestock and every part, portion and kind thereof, has been and will be, within any county or counties, other than the home county, and such livestock and the owner thereof, shall be liable to the said county or counties for the taxes thereon, as other property is liable, and the taxes thereon shall be apportioned between the home county and such other county or counties as hereinafter provided; provided, however, that the tax on all livestock fed in feeding pens or other enclosures in any county or counties other than the home county of such livestock, shall not be apportioned as provided herein, but shall be paid in full to the county treasurer of the home county of such livestock.

History: En. Sec. 1, Ch. 125, L. 1909; amd. Sec. 1, Ch. 177, L. 1921; re-en. Sec. 2069, R. C. M. 1921.

Operation and Effect

Under the provisions of this section, livestock moved from one county within the state to a neighboring county for winter feeding and not for the purpose of running at large or grazing in the latter county, is assessable in its home coun-

ty and not in the county in which the feeding is done; the provisions of section 84-5203, relating to migratory stock having no application to animals falling within the proviso in the former section. *Peterson v. Granite County*, 76 M 214, 216 et seq., 245 P 946.

Taxation⇒261, 331.

61 C.J. Taxation §§ 636, 763, 766.

84-5203
Ref. to
L. '51, c. 85
Sec. 7, p. 148

84-5203. (2070) Duty of owner when livestock is removed from home county to another county. Whenever such livestock is removed, kept, fed, or pastured, or permitted to range or graze, or does range or graze in any county other than its home county, the owner thereof, or the person in charge, or his agent, shall, within fifteen days from the time any such stock enters such other county, deliver to the assessor of such county, and to the assessor of the home county, a written statement, under oath, similar in all respects, as far as practicable, to the statement required at the time of the assessment.

History: En. Sec. 2, Ch. 125, L. 1909; re-en. Sec. 2070, R. C. M. 1921.

Operation and Effect

Under section 84-5202, livestock moved from one county within the state to a neighboring county for winter feeding and not for the purpose of running at large or grazing in the latter county, is assessable in its home county and not in the

county in which the feeding is done; the provision of this section relating to migratory stock having no application to animals falling within the proviso in the former section. *Peterson v. Granite County*, 76 M 214, 245 P 946.

Taxation⇒329.

61 C.J. Taxation § 763 et seq.

84-5204. (2071) Apportionment of taxes upon migratory livestock.

Each county of the state in which livestock is kept, fed, or pastured, or in which it is permitted to range or graze, or does range or graze, is entitled to receive the taxes on said property, in proportion to the time that the same is in such county, and the county to which said livestock is so removed shall be entitled to receive and recover from the home county the taxes collected on said stock, in proportion to the time for the current year such stock is so kept, fed, or pastured, or does range, or graze in the county other than where said livestock is assessed.

History: En. Sec. 3, Ch. 125, L. 1909;
re-en. Sec. 2071, R. C. M. 1921.

84-5204
Ref. to
L. '51, c. 85
Sec. 7, p. 148

84-5205. (2072) Collection and disposition of proceeds of taxes.

The assessor shall indicate on the assessment roll livestock which has or will be kept, fed, pastured, ranged, or grazed in more than one county, and the treasurer, on collecting the taxes thereon in the county in which the same is assessed, shall remit the portion levied for state purposes, as in case of other taxes levied by the state of Montana, and he shall place the remainder of the tax in a separate fund, known as the migratory stock fund, which shall be subject to distribution as hereinafter provided.

History: En. Sec. 4, Ch. 125, L. 1909; Taxation 411, 916.
re-en. Sec. 2072, R. C. M. 1921. 61 C.J. Taxation §§ 866 et seq., 2223.

84-5205
Ref. to
L. '51, c. 85
Sec. 7, p. 148

84-5206. (2073) Distribution of migratory stock fund.

At the regular meeting in July of the board of county commissioners, the assessor of the county shall transmit to the board all information filed with him or in his possession concerning stock assessed, wherein the taxes are to be apportioned between two or more counties, and the board of county commissioners shall proceed, on receipt of such information, to distribute said migratory stock fund, in proportion to the time said stock has been in each of such counties, as above provided, and order warrants drawn in favor of the counties entitled to receive a portion of the said taxes against such migratory stock fund, and the portion remaining, belonging to the home county, shall be distributed on the order of the board of county commissioners to the proper fund, according to the tax levy made during the year such assessment was levied, and the board shall make a like distribution of all moneys received from other counties under the provisions of this act.

History: En. Sec. 5, Ch. 125, L. 1909;
re-en. Sec. 2073, R. C. M. 1921; amd. Sec.
1, Ch. 52, L. 1945.

84-5206
Ref. to
L. '51, c. 85
Sec. 7, p. 148

84-5207. (2074) Removal of livestock after assessment.

No county, by reason of the removal of stock from the home county after assessment, shall be entitled to receive a portion of the taxes collected by reason of said livestock being fed, pastured, ranged, or grazed in a county other than the home county because of the change of ownership of said livestock at the time of its removal, or while being fed or pastured in a pen, field, or enclosure.

History: En. Sec. 6, Ch. 125, L. 1909;
re-en. Sec. 2074, R. C. M. 1921.

84-5207
Ref. to
L. '51, c. 85
Sec. 7, p. 148

84-5208. (2075) Penalty for violation of law. Any person or persons, company, or corporation, who is the owner or has in charge any livestock

84-5208
Ref. to
L. '51, c. 85
Sec. 7, p. 148

within this state, who refuses to make the statement or statements as provided in section 84-5202, shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars.

History: En. Sec. 7, Ch. 125, L. 1909; Taxation 571.
re-en. Sec. 2075, R. C. M. 1921. 61 C.J. Taxation § 1352.

84-5209. (2076) Additional tax levy to pay expense of enforcing stock laws. In addition to appropriations made for such purposes, a tax is hereby authorized and directed to be levied on all livestock in this state, for the purpose of aiding in the payment of the salaries and all expenses connected with the enforcement of the stock laws of the state of Montana and for the payment of bounties on wild animals, as hereinafter specified.

History: En. Sec. 1, Ch. 127, L. 1915; Taxation 70.
re-en. Sec. 2076, R. C. M. 1921. 61 C.J. Taxation § 166.

84-5210. (2077) State board of equalization to prescribe levy. The state board of equalization is hereby empowered and it is made its duty, annually, to prescribe the levy to be made against livestock of all classes for the purpose above indicated, and the various boards herein named shall have the right to recommend to said state board of equalization the amount of such levy.

History: En. Sec. 2, Ch. 127, L. 1915; Taxation 297.
re-en. Sec. 2077, R. C. M. 1921. 61 C.J. Taxation § 677 et seq.

84-5211. (2078) Limitation of levies—livestock funds. The amount of such levy shall not in any event exceed one mill upon the assessed valuation of sheep and one and one-half mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the livestock commission of Montana, including salaries, office expense, detective expense, expense of prosecution, travel, and all incidental expense, and a separate levy of not exceeding one and one-half mills on all livestock for the use of the livestock sanitary board to be placed in what shall be known as the state livestock sanitary board fund for the payment of indemnity for animals slaughtered, and for salaries and expenses incurred in investigating, controlling and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance; provided further that the state treasurer and state auditor, at the written request of the livestock sanitary board shall set aside and transfer from the state livestock sanitary board fund to what shall be known as the state livestock sanitary board emergency fund such funds as may be available and requested, which funds shall be expended only when the livestock sanitary board determines that a livestock disease emergency exists requiring its expenditure, and it shall then be expended for such purposes as the livestock sanitary board may order and direct.

History: En. Sec. 3, Ch. 127, L. 1915; References
re-en. Sec. 2078, R. C. M. 1921; amd. Sec. Northern Pacific Railway Co. v. Dunham,
1, Ch. 152, L. 1929. 108 M 338, 342, 90 P 2d 506.

84-5212. (2079) Use of fund arising from taxes prescribed in preceding section. The money received from the tax levied on sheep, as provided in the first part of the preceding section, shall be placed to the credit of the

sheep inspection and indemnity fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expense of prosecution, travel, and other expense, of the board of sheep commissioners, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the stock inspection and detective fund, to be used for like purposes for said board of stock commissioners. The moneys received from the tax levied by the second division of the preceding section, shall be placed in a fund to be known as the state livestock sanitary board fund, to be used by said board for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith.

History: En. Sec. 4, Ch. 127, L. 1915; Taxation 9063-4.
re-en. Sec. 2079, R. C. M. 1921. 61 C.J. Taxation § 2234 et seq.

84-5213. (2080) Transmission of taxes from county to state treasurer. The taxes levied and the money collected pursuant to the provisions of section 84-5211 shall be transmitted annually, with other taxes for state purposes, to the state treasury by the county treasurer of each county, and such county treasurer shall designate the amount received from the tax levied on sheep, and the amount received from the tax levied on all other livestock, and shall specify said separate amounts in his report to the state treasurer, and such money, when received by the state treasurer, shall be placed to the credit of the funds as provided in the preceding section.

History: En. Sec. 5, Ch. 127, L. 1915;
re-en. Sec. 2080, R. C. M. 1921.

84-5214. (2081) Levy for bounty funds—use of proceeds. The state board of equalization of the state of Montana shall, under the authority of section 9, article XII of the constitution of Montana, and hereby, annually prescribe, make and levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting such livestock by all means of effective predatory animal destruction, extermination and control, including systematic hunting, trapping in planned campaigns, or otherwise, and payment of bounties, against destruction, depredation and injury by wild animals, whether on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. The tax levy shall not exceed in any one (1) year (a) one and one-half ($1\frac{1}{2}$) mills on the assessed valuation of all sheep, and (b) one (1) mill on the assessed valuation of other livestock. The monies received from such tax levies shall be transmitted monthly with other taxes for state purposes, by the county treasurer of each county, to the state treasury, and be by the state treasurer placed in and to the credit of the state bounty fund (with other monies in that fund under the provisions of section 46-1901) and such monies shall thereafter be paid out only on claims duly and regularly presented to the Montana livestock commission, and thereafter to the state board of examiners, and approved, in turn, by each said commission and said board, in accordance with the law applicable either to claims for bounties, when such claims are approved, or to claims for other expenditures necessary and proper for predatory animal control by

other means and methods than payment of bounties, as may be determined by the Montana livestock commission. All the monies in said state bounty fund shall be available for the payment of bounty claims and for expenditures in and for planned, seasonal, or other campaigns directed, or operated by the commission in co-operation with other agencies, for the systematic destruction, extermination and control of predatory wild animals, as may be determined by the commission and the advisory committee thereto. No claims against the bounty fund shall be approved in excess of monies in the fund, and no warrants shall be registered against such fund.

History: En. Sec. 6, Ch. 127, L. 1915; 4, Ch. 73, L. 1923; amd. Sec. 2, Ch. 152, L. re-en. Sec. 2081, R. C. M. 1921; amd. Sec. 1929; amd. Sec. 1, Ch. 111, L. 1947.

84-5215. (2081.1) Bounties, when paid. The livestock commission may, at their discretion, pay such bounty for the destruction of wild animals at such times of the year as they deem advisable.

History: En. Sec. 4½, Ch. 73, L. 1923. Bounties 8.
11 C.J.S. Bounties § 13.

84-5216. (2082) Tax levy for bounties on predatory animals. Whenever the owners, or agent or agents of such owners, representing fifty-one per cent. of the livestock of any county in this state shall present a petition to the board of county commissioners of such county, asking for the levy of a tax upon the livestock of such county for the purpose of paying bounties on predatory animals killed in such county, it shall be the duty of such board of county commissioners to make such levy, which shall not exceed ten mills on the dollar on the assessed valuation of all livestock in such county, which tax shall be assessed and collected in the same manner as all other state and county taxes.

History: En. Sec. 1, Ch. 180, L. 1921; References
re-en. Sec. 2082, R. C. M. 1921.

Northern Pacific Railway Co. v. Dunham, 108 M 338, 342, 90 P 2d 506.

Counties 192.
20 C.J.S. Counties § 281.

84-5217. (2083) Signers of petition—time for presenting—limitation on bounties—bounty inspectors. The petition provided for in section 84-5216 shall be signed by the owners, agent, or agents of not less than fifty-one per cent. of the livestock of such county as ascertained from the assessment-books of such county, and shall recommend to the board of county commissioners the bounties to be paid on such predatory animals, which shall not exceed the following: On each wolf or mountain lion, one hundred dollars; on each wolf pup or mountain lion kitten, twenty dollars; on one coyote, five dollars; on each coyote pup, two dollars fifty cents.

Such petition shall be presented not later than the first day of August of each year, and the board of county commissioners on determining the sufficiency of such petition shall make an order granting such petition, which said order shall fix the levy for that year, and the amount of the bounties to be paid for the killing of each such predatory animal, which shall not exceed the amounts recommended in such petition, and appoint not less than ten, nor more than twenty, stockowners of such county to be

bounty inspectors under this act, without compensation, who shall hold their offices for one year.

History: En. Sec. 2, Ch. 180, L. 1921;
re-en. Sec. 2083, R. C. M. 1921; amd. Sec.
1, Ch. 37, L. 1923.

84-5218. (2084) County bounty fund. The tax collected under this act shall be credited by the county treasurer to a fund to be known as "county bounty fund," and shall be paid out by him upon properly drawn warrants issued thereon by the county clerk.

History: En. Sec. 3, Ch. 180, L. 1921; Counties 161.
re-en. Sec. 2084, R. C. M. 1921. 20 C.J.S. Counties § 231.

84-5219. (2085) Presentation of skins—affidavit. Any person claiming bounty on any predatory animal under this act shall present the green skin, or pelt, of such animal, with all four feet attached thereto, to any one of the bounty inspectors, provided for in section 84-5217, and shall make an affidavit that such animal was killed within the county where the bounty is claimed, which affidavit shall be corroborated by at least two reputable stockowners of such county to the effect that they know, or have good cause to believe, that such animal was killed within such county. For the purpose of this act each bounty inspector provided for in this act shall be empowered to administer oaths. The said bounty inspector shall indorse upon such affidavit his approval or disapproval of such claim and shall cut from such skin or pelt the four feet. The person applying for such bounty shall then present the affidavit, with the indorsements thereon, to the county auditor, or in counties not having an auditor, to the county clerk, who shall attach the same to a claim against said county bounty fund and present it to the board of county commissioners for action, the same as any other claim against the county.

History: En. Sec. 4, Ch. 180, L. 1921;
re-en. Sec. 2085, R. C. M. 1921.

84-5220. (2086) County clerk to provide forms. The county clerk shall provide the necessary forms of affidavits and claims for carrying out the provisions of this act.

History: En. Sec. 5, Ch. 180, L. 1921;
re-en. Sec. 2086, R. C. M. 1921.

84-5221. (2087) Existing bounty laws not affected. Nothing in this act contained shall be construed as interfering with, in any way, or repealing any part of the existing laws of the state relative to the levying of taxes for and paying of the bounties on predatory animals under such state laws.

History: En. Sec. 6, Ch. 180, L. 1921; References
re-en. Sec. 2087, R. C. M. 1921. Hale v. County Treasurer of Mineral Co.,
82 M 98, 265 P 6.

CHAPTER 53

MILITARY SERVICEMEN—SUSPENSION OF LICENSE FEES

Section 84-5301. Suspension of license fees from persons in military service.

84-5301. Suspension of license fees from persons in military service. The collection from any person in the military service of the United States,

as defined by the soldiers' and sailors' civil relief act of October 17, 1940, as amended October 6, 1942, of any license fee or privilege fee or charge, or tax for, and as a prerequisite for carrying on any personal service occupation, or any profession, annually, or for any other period of time, whether falling due prior to or during his period of military service, shall not be made for the period, or any part thereof, during which such person was in military service and for an additional period of six (6) months after the termination of his period of military service, if such person were not actually professing, carrying on and practicing his profession, avocation or occupation in the state of Montana during such period as herein extended, and such person or licensee shall not hereafter be liable for such license fee or privilege fee or tax or personal service charge for any period during which said conditions obtain.

The status, standing and right of any such person or licensee under any of the laws of the state of Montana shall remain in the same force and effect in which said status, right and standing existed at the time such person entered the military service of the United States and for the whole period of such military service and for an additional period of six (6) months after the termination of said period of said military service, and at the end of said extended period said person shall be deemed to be and shall stand, fully and completely restored to all the rights, privileges, of his profession, avocation or occupation, to all intents and purposes as if he had not been absent in military service and had been regularly carrying on his said profession, avocation and occupation and regularly paying all fees and charges due for the same. After the termination of said extended period, six (6) months following termination of his military service, said person shall be subject for the next ensuing annual period, or any part thereof, and regularly thereafter, to all license fees, privilege fees, charges and taxes then lawfully collectible pursuant to law.

History: En. Sec. 1, Ch. 106, L. 1943.

CHAPTER 54

MINES TAXATION—GENERAL PROPERTY AND NET PROCEEDS TAX

Tit. 84, c. 54 Rel. matter L. '51, c. 50 Secs. 1-11 pp. 94-97	Section 84-5401.	Taxation of mines.
	84-5402.	Net proceeds tax—statement of yield.
	84-5403.	Net proceeds—how computed.
	84-5404.	Deductions—capital expenditures.
	84-5405.	Lien of tax.
	84-5406.	Assessment of royalties.
	84-5407.	False or fraudulent reports, procedure in case of.
	84-5408.	Transmission of net proceeds to county assessor.
	84-5409.	Taxation and payment on royalty interests.
	84-5410.	Penalty for failure to make statement—estimate of net proceeds.
	84-5411.	Penalty for false statement.
	84-5412.	Examination of records by board of equalization.
	84-5413.	Lien of tax—enforcement of payment.
	84-5414.	Surface ground and improvements not exempt.
	84-5415.	Dissolved corporations to make returns on net proceeds of mines and pay tax accrued.

84-5401. (2088) Taxation of mines. All mines and mining claims, both placer and rock in place, containing or bearing gold, silver, copper, lead,

coal, or other valuable mineral deposits, after purchase thereof from the United States, shall be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of such mine or claim is used for other than mining purposes, and has a separate and independent value for such other purposes, in which case said surface ground, or any part thereof so used for other than mining purposes shall be taxed at its full value for such other purposes; and all machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, and the annual net proceeds of all mines and mining claims, shall be taxed as other personal property.

History: En. Sec. 3, p. 73, L. 1891; re-en. Sec. 3672, Pol. C. 1895; re-en. Sec. 2500, Rev. C. 1907; re-en. Sec. 2088, R. C. M. 1921.

NOTE.—For history of early acts exempting mines from taxation, see *Northern Pacific Ry. Co. v. Mjelde*, 48 M 287, 137 P 386. See also constitution of Montana, art. XII, sec. 3.

Burden of Proof

One claiming an exemption from taxation has the burden of showing that he is entitled to it; but in an action to enjoin the collection of taxes upon a ditch used solely in connection with placer mining operations, and therefore not subject to taxation, the burden rests upon the state to show that the ditch has a value independent of the placer mining claim, so as to render it liable to taxation, as provided in this section. *Hale v. County of Jefferson*, 39 M 137, 143, 101 P 973.

Under the constitution and the above section, before the land embraced in a mining claim becomes subject to taxation at a valuation greater than the price paid the government therefor, the taxing officers must ascertain, and they have the burden of showing when their authority is questioned, that the surface ground, or some portion thereof, is used for other than mining purposes, and has an independent value for such purpose. *Barnard Realty Co. v. City of Butte*, 50 M 159, 163, 166, 145 P 946. See, also, note of this decision under section 2, article XII, constitution of Montana.

Injunction Restraining Collection; Indian Land

Where in 1936 the supreme court granted an injunction to an oil and gas company "forever" restraining and enjoining the state board of equalization from levying or collecting certain taxes upon oil and gas produced under a lease of trust patent Indian land, but the board in 1941 believing that a later decision of the supreme court of the United States superseded and overruled the former decision and took

steps to collect the taxes, the oil company should have proceeded under sec. 93-9801, subd. 5, instead of instituting a new proceeding, which was properly dismissed. *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 112 M 224, 225, 114 P 2d 521.

Machinery and Improvements

Machinery used in mining, and all property and surface improvements upon or appurtenant to mines and mining claims, which have a value separate and independent of such mines or mining claims, are properly assessed as personal property. *Birney v. Warren*, 28 M 64, 66, 72 P 293.

Net Proceeds

Under this section, which is a reiteration of section 3, article XII, of the state constitution, the annual net proceeds of coal mines are liable to taxation "as other personal property." *Montana Coal & Coke Co. v. Livingston*, 21 M 59, 70, 52 P 780.

Under the state constitution and this section, the net proceeds of all mines and mining claims are taxable the same as other personal property, and the assessor need not follow up the proceeds thereof, the tax being a lien on the mine itself until paid. *Tong v. Maher*, 45 M 142, 144, 145, 122 P 279.

Operation and Effect

Coal in place, found in lands granted by the government to the Northern Pacific Railway Company, which coal the company reserved to itself in deeds to portions thereof sold by it, constitutes a mine, and as such, in its undeveloped condition, is not a proper subject for taxation. *Northern Pacific Ry. Co. v. County of Musselshell et al.*, 54 M 96, 169 P 53.

This section follows the language of the constitution. *Murray v. Hinds*, 30 M 466, 469, 76 P 1039; *Cobban v. Meagher*, 42 M 399, 407, 113 P 290; *Barnard Realty Co. v. City of Butte*, 50 M 159, 163, 145 P 946.

Other Than Mining Purposes

Where a mining claim was within the limits of a city, and, while it had never been made an addition to the city, the owners had made a plat, and sold lots and blocks from the claim for townsite purposes, describing the portions sold by metes and bounds, and it appeared that a shaft had once been sunk on such reserve, but that it had been abandoned, and that the lot on which the shaft was sunk had been sold, the so-called reserve was taxable for purposes other than mining. *Murray v. Hinds*, 30 M 466, 469, 76 P 1039.

A ditch, appurtenant to placer claims, which had always been used to convey water for mining such claims, and for no other purpose, and which, independently of such use, had never been the source of revenue to its owner, although the water could be sold for irrigation and other purposes, and would be valuable in this connection, and no value independent of its use in connection with the placer lands so as to render it subject to taxation under this section. *Hale v. County of Jefferson*, 39 M 137, 142, 101 P 973.

The surface ground of an unpatented mining claim, when used for other than mining purposes, and when it has a separate value for such other purposes, is subject to taxation. *Cobban v. Meagher*, 42 M 399, 409, 113 P 290.

Id. The rights, also reserved in deeds referred to above, to such use of the surface of the land as may be necessary for

the exprolation, mining and carrying away of the coal that may be found below, is a valuable interest in the land itself, and as such property subject to taxation.

Tailings Dump

Tailings dump forming a definite and segregated body or mass classifiable as personal property was not a "mine" and hence proceeds of the sale of valuable minerals removed therefrom were not taxable as "net proceeds of a mine." *Foreman v. Beaverhead County*, 117 M 557, 559, 561, 161 P 2d 524.

References

State v. State Board of Equalization, 67 M 340, 348, 215 P 667; *Anaconda Copper Min. Co. v. Junod*, 71 M 132, 227 P 1001; *Butte and Superior Min. Co. v. McIntyre*, 71 M 254, 229 P 730; *Northern Pac. Ry. Co. v. Musselshell Co.*, 74 M 81, 84 et seq., 238 P 872; *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 112 M 359, 361, 116 P 2d 1012; *Rist v. Toole County*, 117 M 426, 439, 159 P 2d 340.

Taxation—63.

61 C.J. Taxation § 136 et seq.

51 Am. Jur., Taxation, p. 452, § 437; p. 643, § 689; p. 645, § 691.

Tenant's interest in respect of building or other structure erected by him as separate unit for property tax apart from land. 154 ALR 1309.

84-5402. (2089) Net proceeds tax—statement of yield. Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, or other valuable mineral, must on or before the thirty-first day of March of each year make out a statement of the gross yield of the above named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding the first day of January of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state board of equalization, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state board of equalization on or before the thirty-first day of March. Such statement shall show the following:

1. The name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons, corporations, or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons, corporations or associations during the period covered by the statement.

2. The description and location of the mine.
3. The number of tons of ore, barrels of petroleum, cubic feet of natural gas or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement.
4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits from such mine in constituents of commercial value; that is to say, the number of ounces of gold or silver, pounds of copper or lead, tons of coal, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of said ores or mineral products or deposits measured by standard units of measurement, yielded to such person, corporation or association so engaged in mining, and to said royalty holders and each of them, if any, during the period covered by the statement.
5. The gross yield or value in dollars and cents.
6. Actual cost of extracting same from mine.
7. Actual cost of transporting to place of reduction or sale.
8. Actual cost of reduction or sale.
9. Actual cost of marketing the product and conversion of same into money.
10. Cost of construction, repairs and betterments of mines, and cost of repairs and replacements of reduction works.
11. The assessed valuation of reduction works for the calendar year for which such return is made.
12. Actual cost of fire insurance and workmen's compensation insurance.

History: En. Sec. 1, Ch. 237, L. 1921; re-en. Sec. 2089, R. C. M. 1921; amd. Sec. 1, Ch. 191, L. 1925; amd. Sec. 1, Ch. 139, L. 1927; amd. Sec. 1, Ch. 161, L. 1933; amd. Sec. 1, Ch. 188, L. 1935; amd. Sec. 1, Ch. 95, L. 1947.

NOTE.—Earlier acts were sections 1047 to 1050, revised statutes 1879; re-enacted sections 1791 to 1794, fifth division compiled statutes 1887; sections 50 to 57, pp. 93 to 95, laws of 1891; re-enacted sections 3760 to 3768, political code 1895; re-enacted sections 2563 to 2571, revised codes 1907.

Constitutionality

Chapter 140, laws of 1927 (since repealed), making the operator of a mine or oil well jointly liable with the holder of a royalty interest for the payment of the tax assessed against the royalty and authorizing the operator to withhold from the proceeds of the royalty interest the amount of any tax thereon paid by him, held not open to the constitutional objection that the operator is thus made the collector of the tax on the royalty interest, contrary to the provision of section 5, article X, of the constitution, that the county treasurer shall be such collector, the method of thus collecting the tax by the operator at the source of the product being permissible as a certain

and expeditious one calculated to prevent the possibility of any of it escaping taxation. *Byrne v. Fulton Oil Co.*, 85 M 329, 332 et seq., 278 P 514.

Id. Chapter 140, above, held not open to the objection that it impairs the obligation of a contract in that whereas at the time the contract of lease between the operator and the lessor of oil land the law contemplated but one assessment and that to the operator, it imposes part of the tax upon the lessor, since a contract between individuals does not have the effect of depriving the state of its power of taxation.

Id. Under the rule announced in *State v. Silver Bow Refining Co.*, 82 M 280, par. 2 of syllabus, chapter 140, laws of 1927, is not unconstitutional as depriving an owner of a royalty interest in an oil-well of his property without due process of law by not giving him the right to be heard in the proceedings resulting in the assessment of his interest.

Id. Since chapter 140, making royalty interest taxable, applies to all such interests in mining property, it is not unconstitutional as discriminatory.

Under the rule that a contract between individuals cannot deprive the state of any power of taxation otherwise belonging to it, held, that this section and section 2096.2, R. C. M. 1935 (since repealed),

are not unconstitutional as impairing the obligation of a contract when applied to royalty accruing under a contract executed before the enactment of the sections. *Forbes v. Mid-Northern Oil Co.*, 100 M 10, 21, 45 P 2d 673.

Nature of Royalty Interest

The owner of a royalty interest in an oil-well made taxable under this chapter, is the owner of property within the meaning of section 17, article XII, of the constitution, which is taxable and assessable to the owner of such interest as net proceeds of mines under section 3 of the same article, regardless of the form of the lease under which the royalty is reserved. *Byrne v. Fulton Oil Co.*, 85 M 329, 332 et seq., 72 P 514.

Nature of Tax on Royalty

Oil and gas in place is land, and a tax on the income of such oil and gas is a tax on land. A tax on the royalty, which only accrues as a result of the production of oil or gas, is a burden on the production of oil or gas and, therefore, a tax levied and assessed against the gas and oil produced. A tax on royalty is a part of the net proceeds tax arising out of the operation of mines, and the holder of royalty interest is liable for tax thereon in absence of contractual obligation to the contrary. *Northern Pacific Railway Co. v. Gas Development Co.*, 103 M 214, 217, 218, 62 P 2d 204.

Construction of "Royalty" Contracts

Within the meaning of this section and secs. 2096.1 and 2096.2, R. C. M. 1921 (since repealed), the question whether payments required to be made to the lessee of oil lands by the oil-well operator were "royalties," the provisions of the instrument calling for the payments must be construed for what they really are, regardless of designation in the contract. *Forbes v. Mid-Northern Oil Co.*, 100 M 10, 19, 45 P 2d 673.

Deductions

The state board of equalization is a special tribunal with limited powers and must, in making an assessment of net proceeds of mines, pursue the method of procedure prescribed by chapter 237, laws of 1921 (secs. 84-5401 to 84-5414); in it is lodged no discretion to permit deductions from the gross proceeds other than those specifically provided for, or to allow reimbursement to the taxpayer for taxes paid by him by mistake in previous years, and mandamus lies to compel the board to follow the law. *State v. State Board of Equalization*, 67 M 340, 348, 215 P 667.

Held, that taxes and fire insurance premiums paid upon milling and reduction

works owned and operated by a mining company in connection with its mining operations are not deductible as a part of the cost of extracting the minerals and metals from ores taken from its mines in computing the net proceeds of mines for the purpose of arriving at the amount of license tax payable under sections 2344-2355, revised codes of 1921 (since repealed), construed in the light of the provisions of sections 84-5401 to 84-5414, relating to the taxation of mines and net proceeds. *Anaconda Copper Mining Co. v. Junod*, 71 M 132, 135, 227 P 1001.

Estate in Land Held Taxable

Oil and gas leases on Indian lands held under trust patent, in which the oil and gas was reserved for the benefit of the tribe, created an estate in land distinct and separate from the interest held by the Federal government, which estate was subject to operators' net proceeds tax and the gross production tax. *British-American Oil Producing Co. v. State Board of Equalization*, 101 M 293, 302, 54 P 2d 129.

Exemption from Tax

Royalty interests accruing to a Black-foot Indian from an oil and gas lease on reservation lands allotted to and held by him under trust patent are not subject to state taxation under the royalty owner's net proceeds tax. *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 101 M 268, 288, 54 P 2d 117; 112 M 359, 365, 116 P 2d 1012.

Nonresident Royalty Holder

The fact that the owner of a royalty interest in an oil well made taxable under secs. 2096.1 and 2096.2, R. C. M. 1935 (since repealed), is a nonresident of the state does not render him immune from payment of a tax thereon, the tax imposed upon the royalty as a part of the net proceeds being in lieu of the ad valorem tax on the oil in the ground as a part of the realty and not a personal property tax depending upon the residence of the owner. *Forbes v. Mid-Northern Oil Co.*, 100 M 10, 23, 45 P 2d 673.

Not Retroactive

Held, under section 12-201 of this code declaring that no law is retroactive unless expressly so declared to be, that chapter 140, laws of 1927 (since repealed), making royalty interests in mines and oil-wells taxable and ordaining that the act should become effective as of January 1, 1927, is not retroactive, it not expressly being made so, and therefore does not include royalties accruing prior to January 1, 1927. (*Justices Ford and Angstrom*)

disssenting.) *Byrne v. Fulton Oil Co.*, 85 M 329, 332 et seq., 278 P 514; *Anderson v. Sunburst Oil & Refining Co.*, 89 M 175, 176 et seq., 296 P 1108; *Forbes v. Mid-Northern Oil Co.*, 90 M 297, 298, 2 P 2d 1018.

Operation and Effect

Held, that by the enactment of chapter 237, laws 1921 (sections 84-5402 to 84-5414), making net proceeds of mines assessable by the state board of equalization and repealing sections 2563-2571, revised codes of 1907, under which the duty of assessing such proceeds had been placed upon the county taxing officers, a county assessor was without authority after the approval of chapter 237 to assess net mine proceeds, and mandamus did not lie to compel him to obey an order of the county board of equalization that he do so. *State v. State Board of Equalization*, 67 M 340, 348, 215 P 667.

Held, that the legislature could properly add powers additional to those specifically conferred by section 15, article XII, of the constitution, upon the state board of equalization, as it did by chapter 237, laws of 1921 (secs. 84-5402 to 84-5414), by imposing upon the board the duty to assess net proceeds of mines. *Butte & Superior Mining Co. v. McIntyre*, 71 M 254, 256, 229 P 730.

A tax cannot lawfully be levied against a person for property he does not own; and since property in the shape of net proceeds of a mine belongs to the lessee and not to the owner of it, and the statute contemplates but one assessment thereof, to-wit: to the lessee, it was error to assess to the owner, as part of the net proceeds of the mine, the rental received by him from the lessee. *Northern Pac. Ry. Co. v. Musselshell Co.*, 74 M 81, 84 et seq., 238 P 872.

Id. Under sections 84-5401 to 84-5414, the lessee of a (coal) mine, i.e., the person engaged in mining, and not the owner, is the proper party to whom net proceeds are assessable.

Where several persons own separate divisible interests in a mine (or oil well) the interest of each is properly taxable to each under the statute providing for taxation of net proceeds of mines. (Distinguishing instant case from *Northern Pac. Ry. Co. v. Musselshell County*, 74 M 81, 238 P 872, containing language intimating that statute contemplates assessment to but one person.) *Homestake Exploration Corp. v. Schoregge*, 81 M 604, 612, 264 P 388.

State May Tax Production under Lease of Trust Patent Indian Land

Held, that the state board of equalization is authorized to tax the operator's net proceeds tax and the oil producers' license tax or gross production tax, but not the royalty owner's net proceeds tax, on oil and gas produced under a lease of trust patent Indian land. (Overruling *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 101 M 268, 288, 54 P 2d 117, with exception of the royalty owner's net proceeds tax, for the reason that the federal supreme court overruled its holdings upon which the state court's former opinion was based). *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 112 M 359, 361, 116 P 2d 1012.

What Are Royalties

The consideration for certain assignments of rights in oil lands consisting of an agreement to convey to the assignees "as royalty payable in cash" twenty per cent of all oil produced from the premises, were held to constitute "royalties" within the meaning of this section and sections 2096.1 and 2096.2 R. C. M. 1935 (since repealed). *Forbes v. Mid-Northern Oil Co.*, 100 M 10, 19, 45 P 2d 673.

War Bonus No Part of Gross Value

Where the plaintiffs received from the federal government a war bonus or premium for an increased production of lead and zinc produced by them, held that in the determination of the valuation of the net proceeds of mines for the purpose of taxation, the "gross value" of the product which is the basis for the computation of the tax, is the money which the producer receives or should properly receive from a bona fide sale of the product and "gross value" did not include the bonus or premium which was paid not as a part of the value of the product but as an inducement for increased production. *Klies v. Linnane*, 117 M 59, 60, 64, 156 P 2d 183.

References

Byrne v. Fulton Oil Co., 85 M 329, 278 P 514; *Simpson v. Silver Bow County*, 87 M 83, 94, 285 P 195; *British-American Oil Producing Co. v. State Board of Equalization*, 101 M 293, 300, 54 P 2d 129; *Northern Pacific Railway Co. v. Gas Development Co.*, 103 M 214, 215, 62 P 2d 204; *Foreman v. Beaverhead County*, 117 M 557, 560, 161 P 2d 524.

Taxation—331.

61 C.J. Taxation §§ 763, 766 et seq.

84-5403. (2090) Net proceeds—how computed. The state board of equalization shall calculate and compute from said returns the gross product

yielded from such mine, and its gross value in dollars and cents for the year preceding the first day of January, and also shall calculate and compute the net proceeds in dollars and cents of said mine yielded to such person, corporation or association so engaged in mining, which said net proceeds shall be ascertained and determined by subtracting from the value in dollars and cents of the gross product thereof the following, to-wit:

1. All royalty paid or apportioned in cash or in kind by the person, corporation or association so engaged in mining.
2. All moneys expended for necessary labor, machinery and supplies needed and used in the mining operations and developments.
3. All moneys expended for improvement, repairs and betterments necessary in and about the working of the mine.
4. All moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine.
5. Depreciation in the sum of six per cent (6%) of the assessed valuation of such milling and reduction works for the calendar year for which such return is made.
6. All moneys expended for transporting the ores, and mineral products or deposits from the mines to the mill or reduction works or to the place of sale, and for extracting the metals and minerals therefrom, and for marketing the product and the conversion of the same into money.
7. All moneys expended for fire insurance and workmen's compensation insurance.

No moneys invested in the mines and improvements during any year, except the year for which such statement is made, shall be included in such expenditures; and such expenditures shall not include the salaries or any portion thereof, of any person or officer not actually engaged in the working of the mine or superintending the management thereof.

History: En. Sec. 2, Ch. 237, L. 1921; re-en. Sec. 2090, R. C. M. 1921; amd. Sec. 2, Ch. 191, L. 1925; amd. Sec. 2, Ch. 139, L. 1927; amd. Sec. 2, Ch. 161, L. 1933; amd. Sec. 2, Ch. 188, L. 1935.

References

State v. State Board of Equalization, 93 M 19, 51 et seq., 17 P 2d 68. See, also, annotations under section 84-5402, which cover the entire subject from sections 84-5401 to 84-5414; *Forbes v. Mid-North-*

ern Oil Co., 100 M 10, 13, 45 P 2d 673; *Santa Rita Oil & Gas Co. v. State Board of Equalization*, 101 M 268, 273, 54 P 2d 117; *British-American Oil Producing Co. v. State Board of Equalization*, 101 M 293, 300, 54 P 2d 129; *Northern Pacific Railway Co. v. Gas Development Co.*, 103 M 214, 215, 62 P 2d 204; *Klies v. Linnane*, 117 M 59, 60, 156 P 2d 183; *Foreman v. Beaverhead County*, 117 M 557, 560, 161 P 2d 524.

84-5404. Deductions—capital expenditures. The state board of equalization in computing the deductions allowable for expenditures under section 84-5403 on petroleum and natural gas production, shall compute and allow deductions for any capital expenditures made prior to the year for which any such statement is made, where the same have not been previously allowed in computing such net proceeds under the laws of the state of Montana; provided that no such deductions shall be allowed on account of any expenditures made during any calendar year prior to the year 1936; and provided further that no deductions shall be allowed for expenditures

except for the calendar year for which the computation is made and the calendar year preceding the year for which the computation is made.

History: En. Sec. 1, Ch. 202, L. 1937; amd. Sec. 1, Ch. 18, L. 1941; amd. Sec. 2, Ch. 95, L. 1947.

84-5405. (2090.2) Lien of tax. The tax so assessed on net proceeds shall be and shall constitute a lien upon all of the right, title and interest of such operator in or to such mine or mining claim and upon all of the right, title and interest in or to the machinery, buildings, tools and equipment used in operating said mine or mining claim.

History: En. Sec. 4, Ch. 161, L. 1933. **Taxation** 507.

References

61 C.J. Taxation § 1162 et seq.

Foreman v. Beaverhead County, 117 M

51 Am. Jur. 881, Taxation, §§ 1010 et seq.

84-5406. (2090.3) Assessment of royalties. Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations and associations owning or claiming royalty, and the amount or amounts paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the state board of equalization shall proceed to the assessment of all such royalties, and shall assess the same at the full cash value of the money or product yielded during such preceding calendar year, and the same shall be taxed on the same basis as net proceeds of mines are taxed as provided by section 84-301.

History: En. Sec. 3, Ch. 188, L. 1935.

References

Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 273, 54 P 2d 117.

84-5407. (2090.4) False or fraudulent reports, procedure in case of. If any such report required by this chapter contains any wilfully false or fraudulent statements as to the gross amount received by any person, corporation or association so engaged in mining as aforesaid, for any mine's product, then the said state board of equalization shall compute the gross value of such mine's product, and such gross value shall be based upon the average quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery, as evidenced by some established authority or market report, such as the Engineering and Mining Journal of New York City, or some other standard publication, giving the market reports for the year covered by the statement; and, provided further, that if any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the state board of equalization shall compute the gross value of such portion of said mine's product, so sold or disposed of substantially below the market price as aforesaid, which gross value shall be based upon the quotations of the price of such mine's product in New York City, or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report, such as the Engineering and Mining Journal, of New York City, or some other standard

publication giving the market reports for the year covered by such statement. Should there be no quotation covering any particular product, then the state board of equalization shall fix the value of such gross product, or such portion thereof, as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable.

History: En. Sec. 4, Ch. 188, L. 1935.

References

Klies v. Linnane, 117 M 59, 60, 156 P 2d 183.

84-5408. (2091) Transmission of net proceeds to county assessor. On or before the first day of July in each year the state board of equalization shall transmit to the county assessor of each county in which such mines and mining claims are situated, the valuation of the net proceeds of such mines and mining claims for the purpose of taxation, as the same have been determined and fixed by such state board of equalization, and the county assessor shall immediately enter the same upon an assessment roll called "assessment roll of net proceeds of mines", alphabetically arranged, and in which shall be specified in separate columns and under the following heads:

1. The name and address of the owner or lessee of the mine.
2. The description and location of the mine.
3. The number of tons of ore or other mineral products or deposits extracted and treated or sold from the mine during the period covered by the statement.
4. The gross value of the ores, mineral products or deposits, in dollars and cents, extracted and treated, or sold during the year, to be determined as provided in the preceding section.
5. The net proceeds, in dollars and cents, of such mine or mining claim during the years, to be determined as provided in the preceding section.

The form of said assessment roll shall be prescribed by the state board of equalization in conformity with the provisions of this act.

History: En. Sec. 3, Ch. 237, L. 1921; re-en. Sec. 2091, R. C. M. 1921; amd. Sec. 5, Ch. 188, L. 1935; amd. Sec. 1, Ch. 67, L. 1945.

117; British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 300, 54 P 2d 129; Klies v. Linnane, 117 M 59, 61, 156 P 2d 183.

References

Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 273, 54 P 2d

Taxation 382, 411.
61 C.J. Taxation §§ 841, 866 et seq.

84-5409. (2091.1) Taxation and payment on royalty interests. At the time of transmitting net proceeds assessments the state board of equalization shall also transmit the royalty lists or schedules to the county clerk of each county in which such mines and mining claims are located and thereupon the county clerk shall prepare from such net proceeds and royalty assessments a tax roll which shall be by him furnished to the county treasurer on or before the twentieth day of August following, upon which date said taxes shall be due and payable. Assessments of petroleum and natural gas royalties shall be entered by the county clerk in the personal property assessment book under the name of the producer, and such assessments of royalty when entered shall have all the force and effect as if made in the names of the

owners of such royalty individually as well as against the operator. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law. The operator or producer shall be liable for the payment of said taxes, and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that after payment of such tax such operator may recover or withhold from any proceeds of royalty interest, either in kind or in money, coming into his hands, the amount of any tax paid by him upon such royalty or royalty interest.

Assessments of royalty on production of metals, and minerals other than petroleum and natural gas, shall be entered by the county clerk in the personal property assessment book in the name of the recipient or owner of such royalty. The county treasurer shall proceed to give full notice thereof to such recipient or royalty owner, and to collect the taxes thereon in the same manner as taxes on net proceeds of mines.

History: En. Sec. 6, Ch. 188, L. 1935; 2d 117; British-American Oil Producing Co. v. State Board of Equalization, 101 M 293, 300, 54 P 2d 129.

References

Santa Rita Oil & Gas Co. v. State Board of Equalization, 101 M 268, 274, 54 P 423, 515.
61 C.J. Taxation §§ 880, 1224.

84-5410. (2092) Penalty for failure to make statement—estimate of net proceeds. If any person, partnership, association, or corporation shall refuse or neglect to make and deliver, under oath, to the state board of equalization any statement required by this act, or to comply with any requirements of this act, the state board of equalization must cause such refusal to be noted upon the assessment-roll opposite the name of such person, partnership, association, or corporation, and must make an estimate of the ores, mineral products, or deposit mined and treated or sold by such person, partnership, association, or corporation, and upon such estimate shall fix and determine the value of the net proceeds of said mine or mining claim, as hereinbefore set forth. In making an estimate of the value of the net proceeds under this section, the state board of equalization shall have the power to subpoena and examine, under oath, any person, members of a partnership or association, officers or agents of a corporation, and the employees of such person, partnership, association, or corporation, and every person who refuses or neglects to appear and testify, when required so to do by the state board of equalization as herein provided, for each and every refusal shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year, or by both such fine and imprisonment.

History: En. Sec. 4, Ch. 237, L. 1921; Taxation 336(2).
re-en. Sec. 2092, R. C. M. 1921. 61 C.J. Taxation § 772 et seq.

84-5411. (2093) Penalty for false statement. If any person required by this act to make or file any statement, or to verify, under oath, any statement, shall make such statement false in any material respect, or shall verify, under oath, any statement false in any material respect, such person

shall be deemed guilty of perjury, and upon conviction thereof shall be punished as is by law provided for the punishment of perjury.

History: En. Sec. 5, Ch. 237, L. 1921; Perjury 5.
re-en. Sec. 2093, R. C. M. 1921. 48 C.J. Perjury § 74.

84-5412. (2094) Examination of records by board of equalization. The state board of equalization shall have the right and power, at any time, to examine the records of any person, partnership, association, or corporation specified in this act, as the same may pertain to the yield of ore or mineral products or deposit, in order to verify the statements made by such person, partnership, association, or corporation, and if, from such examination, or from other information, said state board of equalization find any statement, or any material part thereof, wilfully false or fraudulent, said state board of equalization must assess in the same manner as provided for in section 84-5403.

History: En. Sec. 6, Ch. 237, L. 1921; Taxation 382.
re-en. Sec. 2094, R. C. M. 1921. 61 C.J. Taxation § 841.

84-5413. (2095) Lien of tax—enforcement of payment. The taxes on such net proceeds must be levied as the levy of other taxes are provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted, and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits; provided, however, that such personal or real property is owned by or under lease by the person, partnership, association, or corporation who extracted said ore, or mineral products or deposits.

The tax on such net proceeds may be collected, and the payment thereof, enforced, by the seizure and sale of the personal property upon which the said tax is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction; provided, however, that a resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but that any two or all of the methods herein provided for may be used until the full amount of such tax is collected.

History: En. Sec. 7, Ch. 237, L. 1921; Taxation 507, 575, 585, 617.
re-en. Sec. 2095, R. C. M. 1921; amd. Sec. 61 C.J. Taxation §§ 1162 et seq., 1358
1, Ch. 143, L. 1925. et seq., 1377, 1526 et seq.

References

Byrne v. Fulton Oil Co., 85 M 329, 337, 278 P 514. 51 Am. Jur. 881, Taxation, §§ 1010 et seq.

84-5414. (2096) Surface ground and improvements not exempt. Nothing in this act must be construed so as to exempt from taxation the surface ground, improvements, buildings, erections, structures, or machinery placed upon any mine or mining claim, or used in connection therewith, or supplies used either in mills, reduction works or mines.

History: En. Sec. 8, Ch. 237, L. 1921; Taxation 63.
re-en. Sec. 2096, R. C. M. 1921. 61 C.J. Taxation § 63.

84-5415. Dissolved corporations to make returns on net proceeds of mines and pay tax accrued. Every corporation which shall be dissolved or cease to do business in this state during any tax-paying year shall make all statements, reports and returns required by law to be made with reference to the net proceeds of mines, and pay the tax due for such period as it transacted business, on or before the date of such dissolution or cessation of business. The state board of equalization may grant a reasonable extension of time for filing a return upon good cause shown therefor.

History: En. Sec. 1, Ch. 10, L. 1941.

CHAPTER 55

LIEU TAXES ON RESETTLEMENT PROJECTS—REQUESTS FOR UNITED STATES PAYMENT OF

- Section 84-5501. Definitions.
- 84-5502. State board of equalization may make requests for sums in lieu of taxes from United States, when.
- 84-5503. Basis for amount of lieu payment.
- 84-5504. Duplicate of agreement—filing—receipt for tax.
- 84-5505. Disposal of moneys.
- 84-5506. Definitions.
- 84-5507. County commissioners may request payments in lieu of taxes from United States.
- 84-5508. Basis of payment.
- 84-5509. Agreement—recitals.
- 84-5510. Notification of amount of tax payment—collection.
- 84-5511. Government project fund.
- 84-5512. Warrants for share payable to subdivisions.
- 84-5513. Subdivision may make agreement with United States, when.
- 84-5514. Deposit of funds.
- 84-5515. Duty of subdivision in absence of agreement.

84-5501. Definitions. The following definitions shall be applied to the terms used in this act:

- (1) "Agreement" shall mean "contract", and shall include renewals and alterations of a contract.
- (2) "Board" shall mean the state board of equalization of the state of Montana.
- (3) "State" shall mean the state of Montana.
- (4) "Services" shall mean such public and state functions as are performed for property in and persons residing within this state.
- (5) "United States" shall mean the United States of America.
- (6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States, located within this state, and shall include persons inhabiting such project.

History: En. Sec. 1, Ch. 58, L. 1939. Taxation 5.
61 C.J. Taxation § 344 et seq.

84-5502. State board of equalization may make requests for sums in lieu of taxes from United States, when. The board is hereby authorized and empowered to make requests of the United States, for and on behalf of this state, for payment of such sums in lieu of taxes as the United States may agree to pay, and to consummate agreements with the United States, in the name of this state, for the performance of services by the state for the

benefit of projects, and for the payment by the United States to the state, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 58, L. 1939.

84-5503. Basis for amount of lieu payment. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to the state of performing services for the benefit of the projects during the period of agreement, after taking into consideration the benefits to be derived by the state from such projects, but shall not be in excess of the taxes which would result to the state for the said period if the real property of the projects within the state were taxable.

History: En. Sec. 3, Ch. 58, L. 1939.

84-5504. Duplicate of agreement—filing—receipt for tax. A duplicate copy of every agreement for payment of sums in lieu of taxes shall be filed in the office of the treasurer of this state. On or before the date on which any payment of sums in lieu of taxes is due, the state treasurer shall present a bill to the United States, in the name of the state, in the amount of such payment. The state treasurer shall give to the United States a receipt in the name of the state for all payments of sums in lieu of taxes.

History: En. Sec. 4, Ch. 58, L. 1939.

84-5505. Disposal of moneys. All payments of sums in lieu of taxes received by this state shall be deposited in funds according to the state levies.

History: En. Sec. 5, Ch. 58, L. 1939;
amd. Sec. 1, Ch. 42, L. 1947.

84-5506. Definitions. The following definitions shall be applied to the terms used in this act:

(1) "Agreement" shall mean "contract", and shall include renewals and alterations of a contract.

(2) "Board" shall mean the board of county commissioners of any county in this state.

(3) "Political subdivision" shall mean any agency or unit of this state which now is, or hereafter shall be, authorized to levy taxes or empowered to cause taxes to be levied.

(4) "Services" shall mean such public and municipal functions as are performed for property in and persons residing within a political subdivision.

(5) "United States" shall mean the United States of America.

(6) "Project" shall mean any resettlement project or rural rehabilitation project for resettlement purposes of the United States or any other lands formerly upon the tax rolls and purchased by the United States and used for resettlement, rehabilitation or grazing purposes, located within this state or any political subdivision thereof, and shall include the persons inhabiting, occupying or using any lands so owned or acquired by the United States.

(7) "Governing body" shall mean the commission, board, body, or persons in which the powers of a subdivision as a body corporate, or otherwise, are vested.

(8) "Fund" shall mean, unless otherwise expressed, the "government project fund" to be established pursuant to section 84-5511.

History: En. Sec. 1, Ch. 59, L. 1939;
amd. Sec. 1, Ch. 139, L. 1941.

Taxation 65.
61 C.J. Taxation § 344 et seq.

84-5507. County commissioners may request payments in lieu of taxes from United States. The board of county commissioners of any county in this state is hereby authorized and empowered to make requests of the United States, for and on behalf of the county and the political subdivisions whose jurisdictional limits are within or coextensive with the limits of the county, for payment of such sums in lieu of taxes as the United States may agree to pay, and to enter into agreements with the United States, in the name of the county, for the performance of services by the county and such political subdivisions for the benefit of the project, and for the payment by the United States to the county, in one or more installments, of such sums in lieu of taxes.

History: En. Sec. 2, Ch. 59, L. 1939.

84-5508. Basis of payment. The amount of any payment of sums in lieu of taxes may be based on the estimated cost to each political subdivision, for and on whose behalf the agreement is entered into, of performing services for the benefit of a project during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from such project, but shall not be in excess of the taxes which would result to the subdivision for the said period if the real property of the project within the subdivision were taxable.

History: En. Sec. 3, Ch. 59, L. 1939.

84-5509. Agreement—recitals. Each agreement entered into pursuant to section 84-5507 shall contain the names of the political subdivisions with respect to which it is consummated, and a statement of the proportionate share of the payment by the United States to which each such subdivision shall be entitled.

History: En. Sec. 4, Ch. 59, L. 1939.

84-5510. Notification of amount of tax payment—collection. The board shall file duplicate copies of every agreement for payment of sums in lieu of taxes with the county clerk and county treasurer. Upon receipt of the same, the county clerk shall notify each political subdivision for and on whose behalf the agreement is executed that the same has been consummated, and state the share of the payment due thereunder to which the subdivision is entitled. On or before the date on which any payment of sums in lieu of taxes is due, the county treasurer shall present a bill to the United States, in the name of the county, in the amount of such payment. The county treasurer shall give to the United States a receipt in the name of the county for all payments of sums in lieu of taxes.

History: En. Sec. 5, Ch. 59, L. 1939.

84-5511. Government project fund. The county treasurer shall establish a fund in the county treasury to be known as the "government project fund". The fund shall contain an account with each political subdivision which is entitled to a share of a payment of sums in lieu of taxes. Whenever

such payment is received, the county treasurer shall apportion it to the several accounts in the fund pursuant to the agreement under which the payment is made.

History: En. Sec. 6, Ch. 59, L. 1939.

84-5512. Warrants for share payable to subdivisions. After apportioning any payment to the several accounts as provided in section 84-5511, the county treasurer shall prepare in duplicate a complete itemized statement, one copy of which shall be filed with the board of county commissioners, and the other of which shall be filed with the county clerk. The board of county commissioners shall, by appropriate resolution, order warrants drawn on the county treasurer to the order of each political subdivision named in the itemized statement, in the amount of the political subdivision's share in the payment. The county clerk shall draw and sign said warrants, which shall also be signed by the chairman of the board of county commissioners. Whenever such warrant is presented to the county treasurer, he shall debit the proper account in the fund, and shall pay the amount of such warrant in full, without deduction, to the political subdivision presenting the same; provided, however, that the county treasurer shall not honor such warrant unless it is endorsed by the president, chairman, or other presiding officer of the governing body of such political subdivision. The endorsement of any warrant by said presiding officer of the governing body of a political subdivision as provided in this section shall be construed as an approval of the agreement under which the payment was received. If any governing body of a political subdivision shall refuse to receive any warrant delivered pursuant to this section, the amount of the warrant shall be refunded to the United States by the county.

History: En. Sec. 7, Ch. 59, L. 1939.

84-5513. Subdivision may make agreement with United States, when. If the United States declines to deal with a board with respect to any political subdivision whose jurisdictional limits are within or coextensive with the limits of the county, or in the event the jurisdictional limits of a political subdivision lie in more than one county, that subdivision is hereby authorized to make request of the United States for payments of such sums in lieu of taxes as the United States may agree to pay, and is hereby empowered to enter into agreements with the United States for the performance by the subdivision of services for the benefit of a project, and for the payment by the United States to the subdivision, in one or more installments, of such sums in lieu of taxes. The amount of such payment may be based upon the cost of performing such services during the period of the agreement, after taking into consideration the benefits to be derived by the subdivision from the project, but shall not be in excess of the taxes which would result to the political subdivision for the period if the real property of the project within the political subdivision were taxable. Whenever any payment is received by a subdivision under an agreement entered into pursuant to this section, the governing body of such subdivision shall issue a receipt for such payment.

History: En. Sec. 8, Ch. 59, L. 1939.

84-5514. Deposit of funds. All money received by a political subdivision pursuant to section 84-5512 or under section 84-5513 shall be deposited in such fund or funds, or items of a fund or funds, as may be designated in the agreement; provided, however, that if the agreement does not make such designation, the money received shall be deposited in such fund or funds, or items of a fund or funds, as the governing body of such subdivision shall by appropriate resolution direct.

History: En. Sec. 9, Ch. 59, L. 1939.

84-5515. Duty of subdivision in absence of agreement. No provision of this act shall be construed to relieve any political subdivision of this state, in the absence of an agreement for payment of sums in lieu of taxes by the United States as provided in this act, of the duty of furnishing, for the benefit of a project, all services which the subdivision usually furnishes for property in and persons residing within the subdivision without a payment of sums in lieu of taxes.

History: En. Sec. 10, Ch. 59, L. 1939.

CHAPTER 56

CIGARETTE TAX—LICENSES—STAMPS

Tit. 84, c. 56
New matter
L. '51, Init. 54
p. 781

- Section 84-5601. Definitions.
- 84-5602. Distributors' and dealers' license—application—fees.
- 84-5603. License—duration.
- 84-5604. Revocation of license.
- 84-5605. Unlawful to possess or sell without license.
- 84-5606. The tax.
- 84-5607. Stamps prepared by board—inventory.
- 84-5608. Stamps purchased at discount.
- 84-5609. Use of tax stamping meters.
- 84-5610. Distributors may not sell stamps.
- 84-5611. Records to be kept by distributors—use of untaxed cigarettes unlawful—violations as nuisance.
- 84-5612. Carriers to report shipments.
- 84-5613. Unlawful to transport unstamped cigarettes.
- 84-5614. Seizures.
- 84-5615. Investigations—hearings.
- 84-5616. Hearing—rehearing.
- 84-5617. Appeals from decision of the board.
- 84-5618. The board to administer act.
- 84-5619. Rules and regulations.
- 84-5620. County attorney and other officers to assist.
- 84-5621. Clerical and field assistants.
- 84-5622. Misdemeanors.
- 84-5623. Saving clause.

84-5601. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(a) The word "board" shall mean the state board of equalization of the state of Montana.

(b) The word "person" shall mean any individual, firm, fiduciary, partnership, corporation, trust, organization, or association however formed.

(c) The word "stamp" shall mean the stamp provided by the state board of equalization, under the provisions of this act.

(d) The word "insignia" shall mean the impression or mark approved by the state board of equalization, used in lieu of stamps, under the provisions of this act.

(e) The words "public warehouses" shall mean agents or representatives of manufacturers who receive cigarettes in car load lots for distribution to distributors and retailers in original cases.

(f) The word "distributor" shall mean any person engaged in the business of producing or manufacturing cigarettes or importing any thereof into this state, for purpose of distribution or sale.

(g) The words "licensed distributor" shall mean distributor duly licensed under the provisions of this act.

(h) The word "dealer" shall mean any person other than a distributor, who is engaged in the business of selling cigarettes at retail, and shall also mean cigarette vending machines.

(i) The words "licensed dealer" shall mean any person other than a distributor, who is duly licensed under the provisions of this act.

(j) The words "sale" and "sell" shall mean and include any transfer of cigarettes by sale, gift, barter or exchange.

History: En. Sec. 1, Ch. 289, L. 1947.

Cross-Reference

Sale of cigarettes to minors forbidden,
sec. 94-35-208.

84-5602. Distributors' and dealers' license—application—fees. Every such distributor or dealer shall secure a license from the board before engaging in such business, or continuing to engage therein, after July 1, 1947. A separate application and a separate license shall be required for each place of business owned, controlled or operated by such person within the state of Montana. Application for such license shall be made on forms prescribed by the board, which shall state the name and address of the applicant, the name, address and place of business to be licensed, the type of business, and such other information as the board may require for the proper administration of this act. Each application for a distributor's license shall be accompanied by a fee of fifteen dollars (\$15.00). Each application for a dealer's license shall be accompanied by a fee of five dollars (\$5.00). No dealer shall be granted a distributor's license except a retailer who also performs, in the usual course of business, a distributor's or wholesaler's function. Each license so issued shall be permanently and prominently displayed on the premises covered by the license. Distributors and dealers licensed under this act may buy, sell or have in their possession, only such cigarettes upon which has the stamp or insignia provided for in this act on each individual package. The stamps or insignia provided for in this act shall be sold to, and affixed by, licensed distributors and retailers only. A distributor's license shall not authorize the holder thereof to make sale of cigarettes at retail in less than carton lots, provided, however, before said distributor shall make any such sale at retail, the stamp or insignia shall be affixed to each individual package. Each cigarette vending machine shall be licensed at a particular place of business, provided that only one machine is to be licensed at a particular place of business where the licensee has more than one machine in operation.

History: En. Sec. 2, Ch. 289, L. 1947.

84-5603. License—duration. Each license so issued shall be valid until surrendered, or revoked by the board, or unless the business or place for which such license was issued, shall be transferred, in which event the holder of the license, shall immediately return it to the board for cancellation.

History: En. Sec. 3, Ch. 289, L. 1947.

84-5604. Revocation of license. The board may revoke the license of any dealer or distributor for failure to comply with any provision of this act, or with any lawful rule or regulation of the board made pursuant hereto. Any person aggrieved by such revocation may apply to the board for a hearing, and may further appeal to the court, as hereinafter provided. When a license has been duly revoked, no license shall again issue to such licensee for a period of one (1) year thereafter. Any person who shall sell cigarettes after his license has been revoked is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 4, Ch. 289, L. 1947.

84-5605. Unlawful to possess or sell without license. No person shall sell, offer to sell, or possess with intent to sell, any cigarettes, at wholesale or retail, unless a license so to do has first been issued to him under the provisions of this act. Any person violating the provisions of this section is guilty of a misdemeanor, and shall be punished as hereinafter provided, and all cigarettes in his possession shall be seized and forfeited to the state.

History: En. Sec. 5, Ch. 289, L. 1947.

84-5606. The tax. From and after the effective date of this act, there is hereby levied, imposed and assessed, and there shall be collected and paid to the state of Montana, upon cigarettes sold or possessed in this state, the following tax which shall be paid prior to the time of sale and delivery thereof, to-wit: Two cents (2c) on each package containing not more than twenty (20) cigarettes, and when packages shall contain more than twenty (20) cigarettes, then two cents (2c) on each additional multiple of twenty (20) cigarettes or fraction thereof.

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L. '51, Init. 54
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Within seventy-two (72) hours after receipt by the distributor or retailer of any such cigarettes, except as hereinafter provided, he shall cause to be securely affixed thereto, the required stamp denoting the tax thereon. Said stamps shall be properly cancelled prior to sale or removal for consumption under such regulations as the board may prescribe. Each package shall have the required stamp affixed thereto in such a manner that the stamp will be destroyed when the package is opened. Every person who shall make, alter, forge or counterfeit any license, stamp or insignia provided for in this act, or who shall assist or be concerned therein, or who shall have in his possession any altered, forged, counterfeit or spurious stamp, license or insignia, with intent to defraud the state, is guilty of forgery, and shall be punished by imprisonment in the state prison for not less than one (1) or more than fourteen (14) years.

History: En. Sec. 6, Ch. 289, L. 1947.

84-5607. Stamps prepared by board—inventory. The board shall prepare and have suitable stamps for use on each package of cigarettes, and shall keep an accurate record of all stamps received by it, and of all stamps delivered, under the provisions of this act. Except as hereinafter specifically provided, the board shall sell the stamps only to licensed distributors and retailers, and the money received by the board under the provisions of this act shall be paid to the state treasurer, and by him credited to the general fund of the state, provided that out of said money there shall be paid on claims regularly presented against the state and approved by the state board of examiners, the costs of enforcing and the expenses of administering the provisions of this act. Provided further, however, that wholesale distributors of cigarettes located outside of this state, may, upon application, be issued a distributor's license and may purchase such stamps from the board and affix such stamps to the package, to be imported and sold in this state, and authorized to cancel the same in the manner prescribed by the regulations of the board.

On or before the 5th day of July, 1947, every distributor and dealer in this state shall file a duly verified inventory with the board, specifying the number of packages of cigarettes in his possession or control on July 1, 1947. The inventory shall be on forms prescribed by the board, and shall be accompanied by a remittance sufficient to pay the tax on cigarettes in stock on July 1, 1947. Immediately upon receipt of such inventory and remittance, the board shall forward to the distributor and dealer the required number of stamps, and immediately upon receipt of such stamps, the distributor or dealer shall affix the same to the packages of cigarettes specified in the inventory, and cancel the same as directed by the board. Thereafter, such stamps shall be affixed to packages of cigarettes only by licensed distributors and retailers. Provided, however, the provisions of this act shall not apply to public warehouses acting as agents of manufacturers.

History: En. Sec. 7, Ch. 289, L. 1947.

84-5608. Stamps purchased at discount. Every licensed distributor and retailer shall be entitled to purchase said stamps at a discount of ten per cent (10%) of their face value, upon payment therefor.

History: En. Sec. 8, Ch. 289, L. 1947.

84-5609. Use of tax stamping meters. The board may authorize any manufacturer, distributor or retailer of cigarettes to use a tax stamping meter machine with which to place an insignia upon each package of cigarettes imported, sold, or delivered in this state, in lieu of said stamps. The insignia shall be one approved by the board. Each individual package of cigarettes imported into this state, delivered or sold therein shall be marked with the proper insignia of such tax stamping meter machine and thereafter any original package of cigarettes so marked may be lawfully possessed and sold within the state by any distributor or dealer licensed under this act. The board shall supervise and check the operation of such tax stamping meter machines. That the operator of such machine shall take the meter thereof to the county treasurer, of the county in which the machine is operated, who is authorized to, and shall set said meter for the number of packages specified and required by the operator. That the county treasurer

shall immediately report to the board on forms prescribed by it, the name of the operator and the number of packages for which said meter was set, and the distributor or retailer, using such tax stamping meter machine, within ten (10) days from the first day of the month of the following month, shall remit to the board the amount of the tax due on the packages of cigarettes for which said tax stamping meter machine was set to stamp for the preceding month.

That any distributor or retailer using such tax stamping meter machine shall be required to furnish a surety bond, to be approved by the board, in the sum of five thousand dollars (\$5,000.00) conditioned for the payment of the tax due on packages of cigarettes stamped by said tax stamping meter machines.

History: En. Sec. 9, Ch. 289, L. 1947.

84-5610. Distributors may not sell stamps. No distributor or retailer shall resell to any other distributor or retailer any stamps purchased by him from the board. Any distributor or retailer who has on hand any unused or uncanceled stamps at the time of discontinuing his business of selling cigarettes, may return such stamps to the board and be paid ninety per cent (90%) of their face value.

History: En. Sec. 10, Ch. 289, L. 1947.

84-5611. Records to be kept by distributors—use of untaxed cigarettes unlawful—violations as nuisance. All such distributors shall keep for a period of one (1) year, all invoices of cigarettes purchased and imported by them, all receipts issued by them and stamps purchased, also, an accurate record of all sales of cigarettes made within the state, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point and destination. Such distributor shall permit the board, its assistants, authorized agents or representatives to examine all taxable items of cigarettes, invoices, receipts, books, paper, memoranda and records, as may be necessary to determine whether the tax stamping meter machine has been used as required, or the stamps required by this act had been purchased and used, or to determine the amount of such tax as may be due or unpaid.

Every person who purchases any package of cigarettes which does not bear the stamp or insignia required by this act, and every person who shall use or consume within this state, any cigarettes, unless the same shall be taken from the original package having affixed thereto the stamp or insignia required by this act, is guilty of a misdemeanor and shall be punished as hereinafter provided.

Every person having possession or control of, or who maintains a building or place where cigarettes are sold in violation of this act, or permits the same to be done in any place or building possessed, controlled or maintained by him, is guilty of maintaining and keeping a nuisance and the building or place so used, together with the personal property and fixtures used in connection therewith shall be deemed a nuisance, and such person shall be enjoined and such building or place, personal property and fixtures abated as a nuisance, at the instance of the state.

History: En. Sec. 11, Ch. 289, L. 1947.

84-5612. Carriers to report shipments. Every common carrier hauling, transporting or shipping into or out of the state of Montana, from or to any other state, any cigarettes shall, when so required by the board, report in writing of such shipments or deliveries to the board, on blanks furnished by it, giving the date, the person to whom the same was consigned and delivered and the quantity as shown by the bill of lading, and such other information as the board may require.

History: En. Sec. 12, Ch. 289, L. 1947.

84-5613. Unlawful to transport unstamped cigarettes. It shall be unlawful for any person to transport into, receive, carry or move from place to place within this state, except in the course of interstate commerce, any unstamped cigarettes. Any person violating the provisions of this section is guilty of a misdemeanor and shall be punished as hereinafter provided, and any motor vehicle, airplane, conveyance, vehicle or other means of transportation in which cigarettes are being transported, together with the cigarettes and other equipment or personal property used in connection with such transportation, and found in such means of transportation, shall be subject to seizure by the board, its duly authorized agent, or any sheriff or deputy, or other police officer, with or without process, and shall be subject to forfeiture in the manner hereinafter provided.

History: En. Sec. 13, Ch. 289, L. 1947.

84-5614. Seizures. Upon the seizure of any cigarettes, and within two (2) days thereafter, the person or officer making such seizure shall deliver an inventory of the property seized to the person from whom such seizure was made, if known, and file a copy thereof with the board. Within ten (10) days after the date of service, the person from whom the seizure was made, or any other person claiming an interest in the property seized, may, within thirty (30) days from such seizure, institute an action in the district court of the county where such seizure was made, to determine the issue of forfeiture. In case a judgment of forfeiture is entered, unless such judgment is stayed pending an appeal to the supreme court, the board shall, as soon as convenient, sell such forfeited property and remit the proceeds, less court costs to the state treasurer who shall deposit the same to the general fund of the state. In the event no action is instituted, as herein provided, such seized property shall be deemed forfeited to the state by operation of law, and the board may thereupon sell the same in the manner aforesaid. In case of the seizure of an automobile, truck, boat, airplane, conveyance, vehicle, or other means of transportation, pursuant to the provisions of this act, the officer making the seizure shall file a like inventory, and the person from whom the seizure was made, may, within thirty (30) days thereafter, commence an action in the district court of the county where the seizure was made, to determine the issue of forfeiture of such vehicle or other means of transportation; provided, however, that whenever the board is satisfied that any person from whom property is seized under the provisions of this act, was acting in good faith and without intent to evade the revenue provisions hereof, it shall release the property so seized without further legal proceedings.

History: En. Sec. 14, Ch. 289, L. 1947.

84-5615. Investigations—hearings. The board and its duly authorized agents are empowered to conduct investigations, inquiries, and hearings hereunder, and any member thereof, or any agent, is authorized to administer oaths and take testimony under oath, relative to the matter of inquiry or investigation. The board, or its authorized agent, may subpoena witnesses and require the production of books, papers, and documents pertinent to such inquiry. The board, or its agent, after the hearing, shall make findings and an order, in writing, which findings and order shall be filed in the office of the board.

History: En. Sec. 15, Ch. 289, L. 1947.

84-5616. Hearing—rehearing. Any person aggrieved by any action of the board or its duly authorized agents, under the provisions of this act, may apply to the board, in writing, for a hearing or rehearing thereon within thirty (30) days after such action of the board or its authorized agents. The board shall promptly consider such application, and may grant or deny the same. If the hearing be denied, the applicant shall be notified thereof, forthwith, and, if granted, the board shall notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises, as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The board, on its own initiative, may order a hearing on any matter concerned with the administration of this act, upon at least ten (10) days notice in writing to the person or persons to be investigated.

History: En. Sec. 16, Ch. 289, L. 1947.

84-5617. Appeals from decision of the board. Any person aggrieved by any action or decision of the board, made under the provisions of this act, may appeal therefrom to the district court of the county where appellant resides, which appeal shall be taken by notice of appeal in writing, setting forth the actions or decision of the board, of which the appellant is aggrieved. Such appeal shall be perfected within thirty (30) days after notice of any decision or action of the board, and shall be taken by serving a notice of appeal upon the board and filing the same with the clerk of said district court, together with a good and sufficient bond to the state of Montana. The condition of such bond shall be to the effect that appellant agrees to prosecute said appeal diligently, and if the court shall finally decide that the state is entitled to judgment, that appellant will pay the amount thereof together with costs upon such appeal. Such bond shall be further conditioned that appellant will comply with the orders and decrees of the court. The bond shall be in the form required by law and in such an amount as the court may require. The notice of appeal shall be signed by the appellant or his attorney, and the matter appealed shall be heard upon ten (10) days notice given by either party, unless a different time is specified by the court. Said district court may grant such relief as the law and the facts in the premises require.

History: En. Sec. 17, Ch. 289, L. 1947.

84-5618. The board to administer act. The board is charged with the duty of administering and enforcing the provisions of this act, and the

board, its members and agents, are hereby given the powers of peace officers, and are authorized and empowered to arrest any person violating any provision of this act, and to enter complaint before any court of competent jurisdiction, and to seize without formal warrant or process and use as evidence, any forged, counterfeit, spurious, or altered license stamp or insignia found in the possession of any person or place.

History: En. Sec. 18, Ch. 289, L. 1947.

84-5619. Rules and regulations. The board shall have power and authority to prescribe all rules and regulations not inconsistent with the provisions of this act, for the detailed and efficient administration thereof.

History: En. Sec. 19, Ch. 289, L. 1947.

84-5620. County attorney and other officers to assist. In the enforcement of this act, the board may call to its assistance, and it shall be the duty of any county attorney, or any peace officer, in this state, to assist the board in its enforcement of this act; and the board is hereby authorized to appoint such additional assistants as may be required to carry out the provisions of this act.

History: En. Sec. 20, Ch. 289, L. 1947.

84-5621. Clerical and field assistants. The board is hereby authorized to employ such clerical and field assistants as may be necessary to properly administer the provisions of this act. All money collected under the provisions of this act, less the expenses incurred, in the administration thereof, shall be paid to the state treasurer, and deposited in the general fund of the state.

History: En. Sec. 21, Ch. 289, L. 1947.

84-5622. Misdemeanors. Unless hereinbefore expressly otherwise provided, the violation of any provision of this act shall constitute a misdemeanor, and any person violating any such provision shall be punished by a fine of not less than one hundred dollars (\$100.00), or more than five hundred dollars (\$500.00), or by imprisonment in the county jail for not less than thirty (30) days or more than six (6) months, or by both such fine and imprisonment; and if such person is the holder of a license issued under this act, such license shall be revoked by the board, and such person shall not be eligible for another such license within one (1) year thereafter.

History: En. Sec. 22, Ch. 289, L. 1947.

84-5623. Saving clause. If any section, sub-section, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

History: En. Sec. 23, Ch. 289, L. 1947.

CHAPTER 57

PUNCH BOARDS, PULL BOARDS AND SIMILAR DEVICES—LICENSE

Section 84-5701. Definitions.

84-5702. Tax stamp required on punch board and similar devices—amount—penalty for failure to affix—collection and disposal of funds—enforcement.

Tit. 84, c. 57
Rel. matter
L. '51, c. 88
Secs. 1-4
pp. 150-152

Tit. 84, c. 57
New matter
L. '51, c. 201
Secs. 1-17
pp. 472-479

84-5701. Definitions. The words and phrases used in this act shall be given the following interpretation:

1. The word "board" unless otherwise designated, means the state board of equalization of the state of Montana.

2. The word "person" includes every individual, partnership, corporation, association, or organization.

3. The words "trade stimulator" mean any device or object housing containing or enclosing, or having as a part thereof numbered tickets, variegated symbols and tokens or any pull board, ticket board or punch board or their equivalents, any one or more of which announces that an award will be made to a purchaser thereof in terms of merchandise or other things of value, but does not mean a slot machine or mechanical device.

History: En. Sec. 1, Ch. 298, L. 1947.

84-5702. Tax stamp required on punch board and similar devices—amount—penalty for failure to affix—collection and disposal of funds—enforcement. From and after the effective date of this act, it shall be lawful for any person as defined herein, to exhibit for use and for sale and to exhibit, sell and use trade stimulators, which, for the purposes of this act, shall be considered any device or object housing, containing or enclosing, or having as a part thereof numbered tickets, variegated symbols, and tokens, or any pull board, ticket board, or punch board, or their equivalents, any one or more, of which announces that an award will be made to a purchaser thereof in terms of merchandise or other things of value, upon the exhibitor permanently affixing to such trade stimulator a use tax stamp of the value hereinafter prescribed, and which use tax stamp will plainly show that a special tax has been paid thereon at the true rate hereby levied and imposed, viz., the sum of three per cent (3%) of the value of the total number of such tabs, tickets, pellets, punches or similar things on the board or the full cash return of such trade stimulator to the exhibitor, as computed by the purchase price posted by the exhibitor as the going price of each numbered ticket, variegated symbol, token or its equivalent; that use tax stamps shall be affixed by the exhibitor to any trade stimulator at the time the same is purchased or otherwise acquired and received by him at his place of business. Said use tax stamps shall, at such time be simultaneously cancelled by the exhibitor indicating by uneraseable writing over the face thereof, identified by his initials and the date of the cancellation on each stamp. Failure to affix and/or cancel such use tax stamps, re-use of a cancelled stamp on other than the original trade stimulator, or permitting minors to patronize a trade stimulator, shall be a misdemeanor and shall be punishable by a fine of not to exceed one hundred dollars (\$100.00), for each separate offense.

The state board of equalization is hereby authorized, empowered and directed to provide such use tax stamps, in such design, title, forms and denominations as will be appropriate, and to collect the moneys therefor, and shall every thirty (30) days, remit the proceeds from the sale of such use tax stamps to the state treasurer for credit to the state general fund; provided, however, that out of said proceeds there shall be paid, on claims regularly presented against the state, and approved by the state board of

84-5701
(S. L. '47
C 298)
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220P(2d)1032
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Secs. 1-17
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L. '51, c. 88
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pp. 150-152

84-5702
(S. L. '47
C. 298)
219P(2d)307
220P(2d)1032
84-5702
Repealed and
new matter
L. '51, c. 201
Secs. 1-17
pp. 472-479
84-5702
Rel. matter
L. '51, c. 88
Secs. 1-4
pp. 150-152

examiners, the costs of enforcing and the expenses of administering the provisions of this act. The state board of equalization is hereby authorized, empowered and directed to supply use tax stamps upon direct application from exhibitors and payment to the board; and for the convenience of purchasers and users of such use tax stamps, the state board of equalization may deposit such stamps with the county treasurer of any county, and it shall be the duty of the county treasurer to accept payment for said stamps and remit therefor to the state board of equalization at intervals fixed by said board, or at any time on demand of said board, and the county treasurer shall at all times be liable to the state board of equalization for the value of any such stamps so deposited with him. The said state board of equalization shall cause to be set up appropriate records to reflect the supply, deposits, purchasers, purchases, and movements of such use tax stamps and payments therefor. The state board of equalization, or any authorized representative thereof, the county treasurer in any county of this state, the sheriff (including under-sheriff and deputies), and county attorney of any county in this state shall enforce the provisions of this act, and for such purposes may inspect and search any premises whereon or wherein said trade stimulators are kept, or any persons having custody of the same, and inspect any such trade stimulators, and the stamp supplies of exhibitors, proceeding with or without, search warrant in circumstances required by the applicable statutes of the state of Montana; all exhibitors shall, upon demand of said officers or representatives, or any one or more of them forthwith display any and all of such devices, or stamps, cancelled or uncanceled, in their custody or on premises.

History: En. Sec. 2, Ch. 298, L. 1947.

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